

MONTANA LEGISLATIVE HISTORY

Chapter 276 1997

Bill H _____ S 67 Original bill & history ✓ C

H. Committee on BUSINESS & LABOR

Hearing Date(s) 3/10 X C

EXEC. ACTION 3/14 X C

_____ C

_____ C

Date Out _____ C

S. Committee on LABOR & EMPLOYMENT

Hearing Date(s) 1/28 X C

HEARING & EXEC. ACTION 2/15 X C

_____ C

_____ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

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SB 64	HISTORY AND FINAL STATUS 1997	38
4/16	SIGNED BY GOVERNOR CHAPTER NUMBER 275 EFFECTIVE DATE: 04/16/97	
SB 64	INTRODUCED BY CRIPPEN LC0261 DRAFTER: KURTZ	
	ENHANCE THE PUBLIC SAFETY ON MONTANA ROADWAYS BY IMPOSING A DAYTIME SPEED LIMIT ON FEDERAL-AID INTERSTATE AND OTHER PUBLIC HIGHWAYS OF THE STATE BY REQUEST OF GOVERNOR & DEPARTMENT OF JUSTICE	
12/27	INTRODUCED	
1/02	FISCAL NOTE REQUESTED	
1/08	FIRST READING	
1/08	REFERRED TO HIGHWAYS & TRANSPORTATION	
1/09	FISCAL NOTE RECEIVED	
1/11	FISCAL NOTE PRINTED	
1/16	REVISED FISCAL NOTE REQUESTED	
1/22	REVISED FISCAL NOTE RECEIVED	
1/22	REVISED FISCAL NOTE PRINTED	
1/30	HEARING	
2/10	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED	
2/11	ADVERSE COMMITTEE REPORT ADOPTED	35 15
2/12	RECONSIDERED PREVIOUS ACTION AND PLACED ON 2ND READING	26 24
2/14	2ND READING DO PASS MOTION FAILED	8 41
SB 65	INTRODUCED BY DEVLIN LC0200 DRAFTER: MALY	
	REVISE HORSERACING LAWS BY REQUEST OF DEPARTMENT OF COMMERCE	
12/27	INTRODUCED	
1/02	FISCAL NOTE REQUESTED	
1/03	REFERRED TO BUSINESS & INDUSTRY	
1/06	FIRST READING	
1/07	FISCAL NOTE RECEIVED	
1/08	FISCAL NOTE PRINTED	
1/15	HEARING	
1/17	COMMITTEE REPORT—BILL PASSED	
1/18	2ND READING PASSED	39 2
1/20	3RD READING PASSED	45 4
	TRANSMITTED TO HOUSE	
1/21	FIRST READING	
1/21	REFERRED TO BUSINESS & LABOR	
1/28	HEARING	
1/29	COMMITTEE REPORT—BILL CONCURRED	
2/01	2ND READING CONCURRED	85 13
2/03	3RD READING CONCURRED	84 16
	RETURNED TO SENATE	
2/06	SIGNED BY PRESIDENT	
2/07	SIGNED BY SPEAKER	
2/07	TRANSMITTED TO GOVERNOR	
2/11	SIGNED BY GOVERNOR CHAPTER NUMBER 18 EFFECTIVE DATE: 02/11/97	

39	SENATE BILLS AND RESOLUTIONS	SB 67
SB 66	INTRODUCED BY BENEDICT LC0189 DRAFTER: HEFFELFINGER	
	CLARIFY THAT STATE AND LOCAL GOVERNMENT AGENCIES MAY COOPERATIVELY PURCHASE BENEFIT SERVICES AND INSURANCE PRODUCTS TO PROVIDE EMPLOYEE GROUP BENEFITS BY REQUEST OF DEPARTMENT OF ADMINISTRATION	
12/27	INTRODUCED	
1/02	FISCAL NOTE REQUESTED	
1/03	REFERRED TO LOCAL GOVERNMENT	
1/06	FIRST READING	
1/10	FISCAL NOTE RECEIVED	
1/11	FISCAL NOTE PRINTED	
1/21	HEARING	
1/31	COMMITTEE REPORT—BILL PASSED AS AMENDED	
2/06	2ND READING PASSED	49 0
2/07	3RD READING PASSED	49 0
	TRANSMITTED TO HOUSE	
2/08	FIRST READING	
2/08	REFERRED TO BUSINESS & LABOR	
3/10	HEARING	
3/11	COMMITTEE REPORT—BILL CONCURRED	
3/14	2ND READING CONCURRED	97 2
3/15	3RD READING CONCURRED	96 2
	RETURNED TO SENATE	
3/19	SIGNED BY PRESIDENT	
3/21	SIGNED BY SPEAKER	
3/21	TRANSMITTED TO GOVERNOR	
3/25	SIGNED BY GOVERNOR CHAPTER NUMBER 147 EFFECTIVE DATE: 03/25/97	
SB 67	INTRODUCED BY BENEDICT LC0085 DRAFTER: MCCLURE	
	REVISE WORKERS' COMPENSATION LAWS BY REQUEST OF GOVERNOR	
12/30	INTRODUCED	
1/02	FISCAL NOTE REQUESTED	
1/03	REFERRED TO LABOR & EMPLOYMENT RELATIONS	
1/06	FIRST READING	
1/13	FISCAL NOTE RECEIVED	
1/14	FISCAL NOTE PRINTED	
1/28	HEARING	
2/15	HEARING	
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED	
2/20	2ND READING PASSED	45 5
2/21	3RD READING PASSED	44 6
	TRANSMITTED TO HOUSE	
2/22	FIRST READING	
2/22	REFERRED TO BUSINESS & LABOR	
3/10	HEARING	
3/13	REVISED FISCAL NOTE RECEIVED	
3/13	REVISED FISCAL NOTE PRINTED	
3/15	COMMITTEE REPORT—BILL CONCURRED AS AMENDED	
3/20	REVISED FISCAL NOTE REQUESTED	
3/25	2ND READING CONCURRED AS AMENDED	55 43
3/26	REVISED FISCAL NOTE RECEIVED	
3/26	REVISED FISCAL NOTE PRINTED	
3/27	3RD READING CONCURRED	60 39

SB 68	HISTORY AND FINAL STATUS 1997	40	
	RETURNED TO SENATE WITH AMENDMENTS		
4/07	2ND READING AMENDMENTS CONCURRED	49	0
4/08	3RD READING CONCURRED AS AMENDED	50	0
4/14	SIGNED BY PRESIDENT		
4/14	SIGNED BY SPEAKER		
4/14	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 276		
	EFFECTIVE DATE: 04/16/97—SECTIONS 6(35), 10, 11 & 32-35		
	EFFECTIVE DATE: 07/01/97—SECTIONS 1-5, 6(1-34), 6(36), 7, 9,		
	12-15, 17, 18, 20, 21, 23, 25-30 & 31(1)		
	EFFECTIVE DATE: TERMINATION DATE OF OLD FUND LIABILITY		
	TAX—SECTIONS 8, 19, 22, 24 & 31(2)		

SB 68	INTRODUCED BY KEATING	LC0572 DRAFTER: FOX	
	PROVIDE THAT A REHABILITATION FACILITY ACCREDITED BY THE COMMISSION ON ACCREDITATION OF REHABILITATION FACILITIES MAY BE CONSIDERED ELIGIBLE FOR LICENSURE AS A REHABILITATION FACILITY OR A TREATMENT FACILITY FOR CHEMICAL DEPENDENCY		
12/30	INTRODUCED		
1/03	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/06	FIRST READING		
1/15	HEARING		
1/27	COMMITTEE REPORT—BILL PASSED		
1/28	2ND READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/29	3RD READING PASSED	48	0
1/30	FIRST READING		
1/30	REFERRED TO HUMAN SERVICES & AGING		
3/05	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED	95	2
3/17	3RD READING CONCURRED	96	2
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	50	0
3/20	3RD READING CONCURRED AS AMENDED	50	0
3/25	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/26	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 188		
	EFFECTIVE DATE: 10/01/97		

SB 69	INTRODUCED BY WATERMAN	LC0327 DRAFTER: NISS	
	AUTHORIZE THE CREATION OF LONG-TERM CARE INSURANCE PARTNERSHIPS BETWEEN INDIVIDUALS, PRIVATE HEALTH INSURERS, THE COMMISSIONER OF INSURANCE AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES		
	BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES		
12/30	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/06	FIRST READING		
1/13	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/15	HEARING		
1/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/18	2ND READING PASSED	37	3

41	SENATE BILLS AND RESOLUTIONS	SB 71	
1/20	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
1/21	FIRST READING		
1/21	REFERRED TO HUMAN SERVICES & AGING		
2/10	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/15	2ND READING CONCURRED	75	23
3/17	3RD READING CONCURRED	76	24
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	50	0
3/20	3RD READING CONCURRED AS AMENDED	50	0
3/24	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/26	TRANSMITTED TO GOVERNOR		
4/02	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 195		
	EFFECTIVE DATE: ON EFFECTIVE DATE OF REPEAL OF 42 U.S.C. 1396p(b)(1)(A) AND (b)(1)(B) OR OF AMENDMENT OF THAT SECTION IN A MANNER PROHIBITING ADJUSTMENT OR RECOVERY OF MEDICAL ASSISTANCE PAID TO INDIVIDUALS DESCRIBED IN THAT SECTION—SECTIONS 4, 5, 7 & 8		
	EFFECTIVE DATE: 6 MONTHS AFTER EFFECTIVE DATE OF SECTIONS 4 & 5—SECTIONS 1-3 & 6		

SB 70	INTRODUCED BY GAGE	LC0310 DRAFTER: ERICKSON	
	REVISE THE SCHOOL FINANCE AND BUDGETING LAWS BY REQUEST OF OPI		
12/30	INTRODUCED		
1/03	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/06	FIRST READING		
1/17	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/22	2ND READING PASSED AS AMENDED	50	0
1/23	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/24	FIRST READING		
1/24	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/29	HEARING		
1/30	COMMITTEE REPORT—BILL CONCURRED		
2/01	2ND READING CONCURRED	89	10
2/03	3RD READING CONCURRED	87	13
	RETURNED TO SENATE		
2/06	SIGNED BY PRESIDENT		
2/07	SIGNED BY SPEAKER		
2/07	TRANSMITTED TO GOVERNOR		
2/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 22		
	EFFECTIVE DATE: 07/01/97		

SB 71	INTRODUCED BY TOEWS	LC0311 DRAFTER: ERICKSON	
	REVISE THE DUTIES OF ELECTED SCHOOL OFFICIALS BY REQUEST OF OPI		
12/30	INTRODUCED		
1/03	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/06	FIRST READING		

SENATE BILL NO. 67
INTRODUCED BY BENEDICT
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; INCREASING TO SEVEN MEMBERS THE STATE COMPENSATION INSURANCE FUND BOARD AND AUTHORIZING A LICENSED INSURANCE PRODUCER MEMBER; PROVIDING FOR MERGER OF THE OLD AND NEW FUND ACCOUNTS; PROVIDING A CONTINGENCY FOR TERMINATING THE OLD FUND LIABILITY TAX ON EMPLOYERS, EMPLOYEES, AND SELF-EMPLOYED PERSONS EFFECTIVE JANUARY 1, 1999; REQUIRING ASSUMPTION OF THE OLD FUND CLAIM LIABILITY BY THE STATE FUND; CLARIFYING THE DEFINITION OF "DEPENDENT" FOR FATAL INJURY BENEFICIARY CLAIMS; PROVIDING THAT AN INSURER'S FAILURE TO MEET TIME LIMITATIONS IS NOT AN ACCEPTANCE OF THE CLAIM; INCREASING COMPENSATION FOR PERMANENT PARTIAL DISABILITY; PROVIDING THAT A WORKER WHO HAS NOT REACHED MAXIMUM HEALING BUT WHO IS RELEASED BY A TREATING PHYSICIAN AND REFUSES THE OFFER OF EMPLOYMENT IN A MODIFIED OR ALTERNATIVE POSITION AT AN EQUIVALENT OR HIGHER WAGE IS NOT ELIGIBLE FOR TEMPORARY PARTIAL OR TEMPORARY TOTAL DISABILITY BENEFITS; INCREASING ACCESS TO REHABILITATION BENEFITS; AUTHORIZING THE STATE FUND TO PROVIDE "OTHER STATES" COVERAGE; CLARIFYING THE STATE FUND'S USE OF LICENSED INSURANCE PRODUCERS; REQUIRING THAT THE STATE FUND REPAY \$20 MILLION TO THE GENERAL FUND; CLARIFYING THE TYPES OF ADMINISTRATIVE EXPENDITURES USED IN DETERMINING THE STATE FUND'S 15 PERCENT LIMITATION; LIMITING THE TIME FOR BRINGING AN ACTION TO RESOLVE A BENEFITS DISPUTE; REQUIRING THE STATE FUND AND THE DEPARTMENT OF JUSTICE TO FILE A JOINT BIENNIAL BUDGET FOR THE WORKERS' COMPENSATION FRAUD OFFICE; PROVIDING FOR TRANSFER OF THE BALANCE IN THE WORKERS' COMPENSATION BOND REPAYMENT ACCOUNT ON JUNE 30, 1997, TO THE STATE FUND; AMENDING SECTIONS 2-15-1019, 2-15-2015, 15-30-207, 17-7-502, 33-1-1205, 33-16-1024, 39-71-116, 39-71-318, 39-71-406, 39-71-606, 39-71-703, 39-71-712, 39-71-1006, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2323, 39-71-2327, 39-71-2361, 39-71-2363, 39-71-2501, 39-71-2503, 39-71-2505, AND 39-71-2905, MCA; REPEALING SECTIONS 39-71-2351, 39-71-2352, 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2504, 39-71-2505, AND 39-71-2506, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND

1 A CONTINGENT TERMINATION DATE."

2

3 WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by
4 eliminating the unfunded liability of the old fund, terminating the old fund liability tax as early as January
5 1, 1999, but no later than January 1, 2000, providing for the payment of dividends to policyholders, and
6 maintaining a viable state compensation insurance fund; and

7 WHEREAS, there was an unfunded liability of \$355 million as of June 30, 1996, for claims for
8 workers' compensation injuries occurring before July 1, 1990, in the old fund, which included \$129 million
9 in outstanding bond debt; and

10 WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and
11 self-employed persons, generating as much as \$50 million each year; and

12 WHEREAS, the surplus of \$231 in the new fund as of June 30, 1996, allowed the Board of
13 Directors of the State Fund to declare a dividend of up to \$109 million to retire the outstanding bond debt
14 in the old fund; and

15 WHEREAS, the unfunded liability in the old fund will be an estimated \$200 million deficit by June
16 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim
17 liability in the new fund will be an estimated \$127 million by June 30, 1997; and

18 WHEREAS, current state law requires the State Fund to use dividends to be applied first to old fund
19 outstanding liability rather than paying dividends directly to policyholders, and merger of the old fund and
20 new fund claims will allow new fund surplus to fully fund the old fund claims, allowing direct payment of
21 dividends to policyholders after elimination of the old fund liability tax; and

22 WHEREAS, combining the old and new funds into a combined State Fund and eliminating the old
23 fund liability tax by the end of the 1998 calendar year could save taxpayers an estimated \$69 million in old
24 fund liability tax payments; and

25 WHEREAS, the \$20 million appropriation received by the State Fund from the general fund during
26 the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the
27 old fund and canceled a planned 22% rate increase; and

28 WHEREAS, the State Fund now agrees to repay the \$20 million appropriation to provide the general
29 fund with additional revenue and to remove any perception that the State Fund remains a burden on the
30 general fund; and

WHEREAS, because decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in benefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's ability to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

WHEREAS, in response to Haag v. Montana Schools Group Insurance Authority, 274 M 109, 906 P.2d 693 (1995), in which the Montana Supreme Court ruled that an insurer's failure to comply with the time limitations for filing a workers' compensation claim constituted acceptance of the claim, current law needs to be clarified to provide that the failure to comply with filing time limitations does not constitute acceptance of the claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of the state compensation insurance fund. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of ~~five~~ seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least ~~three~~ four of the ~~five~~ seven members ~~shall~~ must represent state fund policyholders and may be employees of state fund policyholders. At least ~~three~~ four members of the board shall represent private, for-profit enterprises. One of the seven members may be a licensed insurance producer. A member of the board may not:

(a) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply."

Section 2. Section 2-15-2015, MCA, is amended to read:

"2-15-2015. Workers' compensation fraud office. There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation insurance fund. The office is under the supervision and control of the attorney general and consists of:

(1) ~~four persons~~ one or more investigators qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapters 71 and 72, at the request of the state compensation insurance fund; and

(2) ~~one person~~ one or more attorneys licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, chapters 71 and 72. The ~~attorney~~ attorneys may also assist county attorneys in prosecuting violations of Title 39, chapters 71 and 72, without charge to the county.

(3) The state compensation insurance fund and the department of justice shall jointly submit to the legislature for approval a proposed biennial budget for the workers' compensation fraud office. The proposed budget for staffing and related expenses must be based upon the needs of the state compensation insurance fund for investigating and prosecuting workers' compensation fraud."

Section 3. Section 15-30-207, MCA, is amended to read:

"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing ~~such the~~ the information ~~as that~~ the department requires, including the total wages paid to the employee during the preceding calendar year or any part ~~thereof~~ of the year and showing the total amount of the federal income tax deducted and withheld from ~~such the~~ the wages and the total amount of the tax

deducted and withheld ~~therefrom~~ under the provisions of 15-30-201 through 15-30-209 and ~~39-71-2503~~.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and ~~no~~ additional information return is not required with respect to ~~such~~ the wage payments.

(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, ~~provided that; however,~~ the minimum penalty for failure to file the statements required on or before February 28 of each year ~~shall be~~ is \$50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

Section 4. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; ~~39-71-2504~~; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 5. Section 33-1-1205, MCA, is amended to read:

"33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers -- notice exception. (1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperate fully with the commissioner with respect to the provisions of this part.

(2) Except as provided in subsection (4), an insurer, an officer, employee, or producer of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged insurance fraud to the commissioner within 60 days.

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls any applicable time period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices.

(4) Notice of an alleged insurance fraud involving an insurance claim or application submitted to the state compensation insurance fund or a policy issued by the state compensation insurance fund must be made within 60 days to the fraud detection and prevention unit established pursuant to 39-71-211."

Section 6. Section 33-16-1024, MCA, is amended to read:

"33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization

-- reporting requirements. (1) The plan No. 3 insurer under Title 39, chapter 71, part 23, is required to be a member of a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4.

(2) If the plan No. 3 insurer is not a member of the workers' compensation advisory organization designated under 33-16-1023, then, subject to the deviations from the uniform statistical plan, uniform classification system, and uniform experience rating plan that may be approved by the board of directors of the plan No. 3 insurer as provided in 39-71-2316~~(5)~~(1)(e), the insurer shall:

(a) record and report its workers' compensation experience to the designated advisory organization as required in the uniform statistical plan of the designated workers' compensation advisory organization approved by the commissioner, the uniform classification system, and the uniform experience rating plan that have been filed by the designated advisory organization with and approved by the commissioner; and

(b) use the forms and adhere to the rules that the designated advisory organization develops and files with the commissioner under 33-16-1023."

Section 7. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

~~(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:~~

~~(a) investigation, review, and settlement of claims;~~

~~(b) payment of benefits;~~

~~(c) setting of reserves;~~

~~(d) furnishing of services and facilities; and~~

~~(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.~~

~~(3)~~(2) "Aid or sustenance" means any public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

~~(4)~~(3) "Average weekly wage" means the mean weekly earnings of all employees under covered

1 employment, as defined and established annually by the department. It is established at the nearest whole
2 dollar number and must be adopted by the department prior to July 1 of each year.

3 ~~(5)~~(4) "Beneficiary" means:

4 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
5 of injury;

6 (b) an unmarried child under 18 years of age;

7 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or
8 is enrolled in an accredited apprenticeship program;

9 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
10 decedent for support at the time of injury;

11 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the
12 time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

13 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
14 decedent for support at the time of the injury but only until the age of 18 years and only when a
15 beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

16 ~~(6)~~(5) "Casual employment" means employment not in the usual course of the trade, business,
17 profession, or occupation of the employer.

18 ~~(7)~~(6) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
19 to the injury.

20 ~~(8)~~(7) "Construction industry" means the major group of general contractors and operative builders,
21 heavy construction (other than building construction) contractors, and special trade contractors, listed in
22 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
23 include office workers, design professionals, salespersons, estimators, or any other related employment that
24 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
25 site.

26 ~~(9)~~(8) "Days" means calendar days, unless otherwise specified.

27 ~~(10)~~(9) "Department" means the department of labor and industry.

28 ~~(11)~~(10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

29 ~~(12)~~(11) "Household or domestic employment" means employment of persons other than members
30 of the household for the purpose of tending to the aid and comfort of the employer or members of the

1 employer's family, including but not limited to housecleaning and yard work, but does not include
2 employment beyond the scope of normal household or domestic duties, such as home health care or
3 domiciliary care.

4 ~~(13)~~(12) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
5 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

6 ~~(14)~~(13) "Invalid" means one who is physically or mentally incapacitated.

7 ~~(15)~~(14) "Limited liability company" is as defined in 35-8-102.

8 ~~(16)~~(15) "Maintenance care" means treatment designed to provide the optimum state of health
9 while minimizing recurrence of the clinical status.

10 ~~(17)~~(16) "Medical stability", "maximum healing", or "maximum medical healing" means a point in
11 the healing process when further material improvement would not be reasonably expected from primary
12 medical treatment.

13 ~~(18)~~(17) "Objective medical findings" means medical evidence, including range of motion, atrophy,
14 muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

15 ~~(19)~~(18) "Order" means any decision, rule, direction, requirement, or standard of the department
16 or any other determination arrived at or decision made by the department.

17 ~~(20)~~(19) "Palliative care" means treatment designed to reduce or ease symptoms without curing
18 the underlying cause of the symptoms.

19 ~~(21)~~(20) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average
20 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
21 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
22 current year. However, an estimate may be made by the department for any employer starting in business
23 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
24 or refund by the department, as the case may actually be, on December 31 of the current year. An
25 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
26 an employer.

27 ~~(22)~~(21) "Permanent partial disability" means a physical condition in which a worker, after reaching
28 maximum medical healing:

29 (a) has a permanent impairment established by objective medical findings;

30 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's

1 ability to work; and

2 (c) has an actual wage loss as a result of the injury.

3 ~~(23)~~(22) "Permanent total disability" means a physical condition resulting from injury as defined in
4 this chapter, after a worker reaches maximum medical healing, in which a worker does not have a
5 reasonable prospect of physically performing regular employment. Regular employment means work on a
6 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this
7 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is
8 permanently totally disabled.

9 ~~(24)~~(23) The "plant of the employer" includes the place of business of a third person while the
10 employer has access to or control over the place of business for the purpose of carrying on the employer's
11 usual trade, business, or occupation.

12 ~~(25)~~(24) "Primary medical services" means treatment prescribed by a treating physician, for
13 conditions resulting from the injury, necessary for achieving medical stability.

14 ~~(26)~~(25) "Public corporation" means the state or any county, municipal corporation, school district,
15 city, city under a commission form of government or special charter, town, or village.

16 ~~(27)~~(26) "Reasonably safe place to work" means that the place of employment has been made as
17 free from danger to the life or safety of the employee as the nature of the employment will reasonably
18 permit.

19 ~~(28)~~(27) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and
20 that are reasonably safe for use for the particular purpose for which they are furnished.

21 ~~(29)~~(28) (a) "Secondary medical services" means those medical services or appliances that are
22 considered not medically necessary for medical stability. The services and appliances include but are not
23 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
24 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
25 hospitals, or rehabilitation facilities.

26 (b) (i) As used in this subsection ~~(29)~~ (28), "disability" means a condition in which a worker's
27 ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an
28 injury. The restrictions may be combined with factors, such as the worker's age, education, work history,
29 and other factors that affect the worker's ability to engage in gainful employment.

30 (ii) Disability does not mean a purely medical condition.

1 ~~(30)~~(29) "Sole proprietor" means the person who has the exclusive legal right or title to or
2 ownership of a business enterprise.

3 ~~(31)~~(30) "Temporary partial disability" means a physical condition resulting from an injury, as
4 defined in 39-71-119, in which a worker, prior to maximum healing:

5 (a) is temporarily unable to return to the position held at the time of injury because of a medically
6 determined physical restriction;

7 (b) returns to work in a modified or alternative employment; and

8 (c) suffers a partial wage loss.

9 ~~(32)~~(31) "Temporary service contractor" means a person, firm, association, partnership, limited
10 liability company, or corporation conducting business that hires its own employees and assigns them to
11 clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
12 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
13 assignments and projects.

14 ~~(33)~~(32) "Temporary total disability" means a physical condition resulting from an injury, as defined
15 in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum
16 medical healing.

17 ~~(34)~~(33) "Temporary worker" means a worker whose services are furnished to another on a
18 part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement
19 a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special
20 assignments and projects.

21 ~~(35)~~(34) "Treating physician" means a person who is primarily responsible for the treatment of a
22 worker's compensable injury and is:

23 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
24 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

25 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

26 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
27 there is not a physician, as defined in subsection ~~(35)(a)~~ (34)(a), in the area where the physician
28 assistant-certified is located;

29 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

30 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

1 ~~(36)~~(35) "Year", unless otherwise specified, means calendar year."

2
3 **Section 8.** Section 39-71-318, MCA, is amended to read:

4 **"39-71-318. Hearings -- rules of evidence -- conduct -- filing limits -- exception.** (1) The statutory
5 and common-law rules of evidence do not apply to a hearing before the department under this chapter.
6 A petition for a hearing before the department must be filed within 2 years after the dispute arises or after
7 benefits are denied, whichever occurs first.

8 (2) Except for a hearing before the workers' compensation court, a hearing under this chapter may
9 be conducted by telephone or by videoconference."

10
11 **Section 9.** Section 39-71-406, MCA, is amended to read:

12 **"39-71-406. Deduction from wages of any part of premium a misdemeanor.** It is unlawful for the
13 employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages
14 or earnings of the employer's workers, and the making or attempt to make any ~~such~~ premium deduction
15 is a misdemeanor. ~~The workers' compensation old fund liability tax under 39-71-2503 is not a premium for~~
16 ~~the purpose of this section."~~

17
18 **Section 10.** Section 39-71-606, MCA, is amended to read:

19 **"39-71-606. Insurer to accept or deny claim within thirty days of receipt -- notice of benefits and**
20 **entitlements to claimants -- notice of denial -- notice of reopening -- notice to employer.** (1) ~~Every~~ Each
21 insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt
22 of a claim for compensation, either accept or deny the claim, and, if denied, shall inform the claimant and
23 the department in writing of ~~such~~ the denial.

24 (2) The department shall make available to insurers for distribution to claimants sufficient copies
25 of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon
26 receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and
27 entitlements available by providing the claimant a copy of the document prepared by the department.

28 (3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall
29 notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose
30 of paying compensation benefits.

1 (4) Upon the request of an employer that it insures, an insurer shall notify the employer of all
2 compensation benefits that are ongoing and are being charged against that employer's account.

3 (5) Failure of an insurer to comply with the time limitations required in this section does not
4 constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with
5 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be
6 compensable by the workers' compensation court."

7
8 **Section 11.** Section 39-71-703, MCA, is amended to read:

9 **"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a
10 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits,
11 the worker is entitled to a permanent partial disability award if that worker:

12 (a) has an actual wage loss as a result of the injury; and

13 (b) has a permanent impairment rating that:

14 (i) is established by objective medical findings; and

15 (ii) is more than zero as determined by the latest edition of the American medical association Guides
16 to the Evaluation of Permanent Impairment.

17 (2) When a worker receives an impairment rating as the result of a compensable injury and has no
18 actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

19 (3) The permanent partial disability award must be arrived at by multiplying the percentage arrived
20 at through the calculation provided in subsection (4) by 350 weeks.

21 (4) A permanent partial disability award granted an injured worker may not exceed a permanent
22 partial disability rating of 100%.

23 (5) The percentage to be used in subsection (3) must be determined by adding all of the following
24 applicable percentages to the impairment rating:

25 (a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over
26 40 years of age at the time of injury, 1%;

27 (b) for a worker who has completed less than 12 years of education, 1%; for a worker who has
28 completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

29 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an
30 actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual

1 wage loss of ~~more than \$2~~ \$2.01 to \$4 an hour as a result of the industrial injury, 20%; if a worker has
2 an actual wage loss of \$4.01 to \$6 an hour as a result of the industrial injury, 30%; if a worker has an
3 actual wage loss of more than \$6 an hour as a result of the industrial injury, 40%. Wage loss benefits must
4 be based on the difference between the actual wages received at the time of injury and the wages that the
5 worker earns or is qualified to earn after the worker reaches maximum healing.

6 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury
7 the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was
8 performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%;
9 if a worker was performing medium labor activity at the time of the injury and after the injury the worker
10 can perform only light or sedentary labor activity, 2%.

11 (6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at
12 the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly
13 benefit amount established for an injured worker may not be changed by a subsequent adjustment in the
14 state's average weekly wage for future fiscal years.

15 (7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body,
16 the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury
17 or injuries.

18 (8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under
19 this section must be calculated based on the wages that the worker earns or would be qualified to earn
20 following the completion of the rehabilitation plan.

21 (9) As used in this section:

22 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds
23 frequently;

24 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25
25 pounds frequently;

26 (c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds
27 frequently; and

28 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5
29 pounds frequently."

1 **Section 12.** Section 39-71-712, MCA, is amended to read:

2 **"39-71-712. Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured
3 worker has a physical restriction and is approved to return to a modified or alternative employment that the
4 worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a
5 temporary work restriction, the worker qualifies for temporary partial disability benefits.

6 (2) An insurer's liability for temporary partial disability must be the difference between the injured
7 worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a
8 week, and the actual weekly wages earned during the period that the claimant is temporarily partially
9 disabled, not to exceed the injured worker's temporary total disability benefit rate.

10 (3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend
11 the period of temporary partial disability payments.

12 (4) A worker is not eligible for temporary partial disability benefits or temporary total disability
13 benefits if:

14 (a) the worker has been released by the treating physician to return to a modified or alternative
15 position that the individual is able and qualified to perform with the same employer;

16 (b) the wages payable in the modified or alternative position, when combined with the temporary
17 partial disability benefits, would result in an equivalent or higher wage than the worker received at the time
18 of injury; and

19 (c) the worker refuses to accept the modified or alternative position. A worker requalifies for
20 temporary total disability benefits if the modified or alternative position is no longer available to the worker
21 and the worker continues to be temporarily totally disabled as defined in 39-71-116.

22 (5) Temporary partial disability may not be credited against any permanent partial disability award
23 or settlement under 39-71-703."

24
25 **Section 13.** Section 39-71-1006, MCA, is amended to read:

26 **"39-71-1006. Rehabilitation benefits.** (1) A disabled worker, as defined in 39-71-1011, is eligible
27 for rehabilitation benefits if:

28 (a) the worker has an actual wage loss or a whole person impairment rating of 15% or greater as
29 a result of the injury;

30 (b) a rehabilitation provider, as designated by the insurer, certifies that the injured worker has

1 reasonable vocational goals and reasonable reemployment opportunity ~~and~~. If eligible because of an
2 impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the
3 worker's wage compared to the wage that the worker received at the time of injury. If eligible because of
4 a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with
5 rehabilitation; ~~and~~.

6 (c) a rehabilitation plan agreed upon by the injured worker and the insurer is filed with the
7 department. The plan must take into consideration the worker's age, education, training, work history,
8 residual physical capacities, and vocational interests. The plan must specify a beginning and completion
9 date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the
10 department of public health and human services to use the funds.

11 (2) After filing the rehabilitation plan with the department, the disabled worker is entitled to receive
12 biweekly compensation benefits at the injured worker's temporary total disability rate. The benefits must
13 be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan
14 must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits
15 must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan.
16 Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

17 (3) A worker may not receive temporary total benefits and the benefits under subsection (2) during
18 the same period of time.

19 (4) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker
20 until the rehabilitation plan is completed.

21 (5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan
22 within 78 weeks of reaching maximum medical healing.

23 (6) A worker may not receive both wages and rehabilitation benefits without the written consent
24 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of
25 the insurer is guilty of theft and may be prosecuted under 45-6-301."

26
27 **Section 14.** Section 39-71-2316, MCA, is amended to read:

28 **"39-71-2316. Powers of state fund -- assumption of pre-July 1, 1990, claims. (1)** For the
29 purposes of carrying out its functions, the state fund may:

30 ~~(1)(a)~~ insure any employer for workers' compensation and occupational disease liability as the

1 coverage is required by the laws of this state and, as part of the coverage, provide related employers'
2 liability insurance upon approval of the board;

3 ~~(2)(b)~~ sue and be sued;

4 ~~(3)(c)~~ except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
5 relating to the administration of the state fund, including claims management, servicing, and payment;

6 ~~(4)(d)~~ collect and disburse money received;

7 ~~(5)(e)~~ adopt classifications and charge premiums for the classifications so that the state fund will
8 be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
9 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
10 chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the
11 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested
12 case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium
13 rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a
14 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the
15 classifications of employment adopted by the designated workers' compensation advisory organization, as
16 provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates.
17 Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a
18 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may
19 not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's
20 specific payroll or loss information, including but not limited to experience modification factors.

21 ~~(6)(f)~~ pay the amounts determined due under a policy of insurance issued by the state fund;

22 ~~(7)(g)~~ hire personnel;

23 ~~(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not~~
24 ~~be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside,~~
25 ~~money that can be declared as a dividend must be transferred to the account created by 30-71-2321 for~~
26 ~~claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes~~
27 ~~of that account. After all claims funded by that account have been paid, dividends may be declared and~~
28 ~~paid to insureds.~~

29 (h) upon approval of the board, contract with licensed resident insurance producers;

30 (i) upon approval of the board, enter into agreements with licensed workers' compensation insurers

1 to provide workers' compensation coverage in other states to Montana-domiciled employers insured with
2 the state fund;

3 ~~(9)(j)~~ perform all functions and exercise all powers of a private insurance carrier that are necessary,
4 appropriate, or convenient for the administration of the state fund.

5 (2) On [the effective date of this section], the state fund shall assume full liability for the
6 administration and payment of claims for injuries resulting from accidents that occurred before July 1,
7 1990."

8
9 **Section 15.** Section 39-71-2316, MCA, is amended to read:

10 **"39-71-2316. Powers of state fund. (1)** For the purposes of carrying out its functions, the state
11 fund may:

12 ~~(1)(a)~~ insure any employer for workers' compensation and occupational disease liability as the
13 coverage is required by the laws of this state and, as part of the coverage, provide related employers'
14 liability insurance upon approval of the board;

15 ~~(2)(b)~~ sue and be sued;

16 ~~(3)(c)~~ except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
17 relating to the administration of the state fund, including claims management, servicing, and payment;

18 ~~(4)(d)~~ collect and disburse money received;

19 ~~(5)(e)~~ (e) adopt classifications and charge premiums for the classifications so that the state fund will
20 be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
21 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
22 chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the
23 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested
24 case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium
25 rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a
26 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the
27 classifications of employment adopted by the designated workers' compensation advisory organization, as
28 provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates.
29 Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a
30 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may

not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

~~(6)(f)~~ pay the amounts determined due under a policy of insurance issued by the state fund;

~~(7)(g)~~ hire personnel;

~~(8)(h)~~ declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. ~~If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.~~

(i) upon approval of the board, contract with licensed resident insurance producers;

(j) upon approval of the board, enter into agreements with licensed workers' compensation insurers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

~~(9)(k)~~ perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) On [the effective date of this section], the state fund shall assume full liability for the administration and payment of claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 16. Section 39-71-2320, MCA, is amended to read:

"39-71-2320. ~~(Temporary)~~ Property of state fund -- investment required -- exception. All (1) Except as provided in subsection (2), all premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

(2) The state fund shall pay to the general fund:

(a) \$10 million in the fiscal year ending June 30, 1998; and

(b) \$10 million in the fiscal year ending June 30, 1999.

~~39-71-2320. (Effective July 1, 1997, on occurrence of contingency) Property of state fund investment required exception for common stock. (1) All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808. Except as provided in subsection (2), state fund money may be invested in common stocks of any corporation.~~

~~(2) State fund money may be invested in common stocks of a corporation if the investment does not cause the book value of state fund common stock investments to exceed 15% of the book value of the state fund total invested assets or does not cause the book value of common stock investments in one corporation to exceed 2% of the book value of the state fund total invested assets on the date of purchase. (Effective on approval by electorate of House Bill No. 463 sec. 5, Ch. 424, L. 1995.)"~~

Section 17. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) ~~(a)~~ All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, ~~and~~ securities acquired by or through use of money, and taxes collected under 39-71-2503 and 39-71-2505 must be deposited in the state fund. ~~They must be separated into two accounts based upon whether they relate to pay claims for injuries~~ resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

~~(b)(2)~~ All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

~~(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."~~

Section 18. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) ~~(a)~~ All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through

1 use of money must be deposited in the state fund. ~~They must be separated into two accounts based upon~~
2 ~~whether they relate to~~ pay claims for injuries resulting from accidents that occurred before July 1, 1990,
3 or claims for injuries resulting from accidents that occur on or after that date.

4 ~~(b)(2)~~ All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

5 ~~(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and~~
6 ~~39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred~~
7 ~~before July 1, 1990."~~

8
9 **Section 19.** Section 39-71-2322, MCA, is amended to read:

10 **"39-71-2322. Money in state fund held in trust -- disposition of funds upon repeal of chapter --**
11 **exception.** ~~The~~ Except as provided in 39-71-2320, the money coming into the state fund must be held in
12 trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject
13 to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision,
14 distribution must be in accordance with the justice of the matter, due regard being ~~had~~ given to obligations
15 of compensation incurred and existing."

16
17 **Section 20.** Section 39-71-2323, MCA, is amended to read:

18 **"39-71-2323. Surplus in state fund -- payment of dividends.** Subject to the provisions of
19 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321
20 ~~for claims for injuries resulting from accidents that occur on or after July 1, 1990,~~ an excess of assets over
21 liabilities, including necessary reserves and a reasonable surplus, and if the excess may be refunded safely,
22 then the state fund may declare a dividend. The rules of the state fund must prescribe the manner of
23 payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable
24 to them in the fund for that year. In determining the amount or proportion of the balance to which the
25 employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and
26 accident experience of each individual employer during the dividend year."

27
28 **Section 21.** Section 39-71-2327, MCA, is amended to read:

29 **"39-71-2327. Earnings of state fund to be credited to fund -- improper use a felony -- exception.**
30 **All** Except as provided in 39-71-2320, all earnings made by the state fund by reason of interest paid for

1 the deposit ~~thereof~~ of funds or otherwise must be credited to and become a part of the fund, and the
2 making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person
3 convicted of an offense under this section is punishable by imprisonment in the state prison for a term not
4 to exceed 2 years or a fine of not more than \$5,000, or both."

5
6 **Section 22.** Section 39-71-2361, MCA, is amended to read:

7 **"39-71-2361. Legislative audit of state fund.** The legislative auditor shall annually conduct or have
8 conducted a financial and compliance audit of the state fund, including its operations relating to claims for
9 injuries ~~resulting from accidents that occurred before July 1, 1990.~~ The audit must include evaluations of
10 the claims reservation process, the amounts reserved, and the current report of the state fund's actuary.
11 The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are
12 an expense of and must be paid by the state fund ~~and must be allocated between those claims for injuries~~
13 ~~resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from~~
14 ~~accidents that occur on or after that date."~~

15
16 **Section 23.** Section 39-71-2363, MCA, is amended to read:

17 **"39-71-2363. Agency law -- submission of budget -- annual report.** (1) The state fund is subject
18 to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the
19 provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7,
20 parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4,
21 part 1.

22 (2) ~~The~~ (a) Except as provided in 2-15-2015, the executive director shall annually submit to the
23 board for its approval an estimated budget of the entire expense of administering the state fund for the
24 succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund.
25 The administrative expenditures approved by the board may not exceed 15% of the earned annual premium
26 and investment income of the prior fiscal year. A copy of the approved budget must be delivered to the
27 governor and the legislature.

28 (b) The administrative expenditures used to determine the 15% limit in subsection (1) do not
29 include:

30 (i) allocated or unallocated loss adjustment expenses determined in accordance with the guidelines

1 promulgated by the national association of insurance commissioners;
2 (ii) capital asset expenditures required in full accrual accounting, except for capital assets
3 depreciation expenses;
4 (iii) payments pursuant to contracts with licensed resident insurance producers; and
5 (iv) dividend payments.
6 (3) The board shall submit an annual financial report to the governor and to the legislature as
7 provided in 5-11-210, indicating the business done by the state fund during the previous year and
8 containing a statement of the estimated liabilities of the state fund as determined by an independent
9 actuary."

10
11 **Section 24.** Section 39-71-2501, MCA, is amended to read:
12 **"39-71-2501. Definitions.** As used in this part, the following definitions apply:
13 ~~(1) "Account" means the workers' compensation bond repayment account established in~~
14 ~~39-71-2504.~~
15 ~~(2)(1)~~ (1) "Department" means the department of revenue provided for in 2-15-1301.
16 ~~(3)(2)~~ (2) "Employee" includes an officer, employee, or elected public official of the United States, the
17 state of Montana, or any political subdivision of the United States or the state of Montana or any agency
18 or instrumentality of the United States, the state of Montana, or a political subdivision of the United States
19 or the state of Montana. The term "employee" also includes an officer of a corporation.
20 ~~(4)(3)~~ (a) "Employer" means, except as provided in subsection ~~(4)(b)~~ (3)(b), the person for whom
21 an individual performs or performed any service, of whatever nature, as an employee of the person.
22 (b) If the person for whom the individual performs or performed the service does not have control
23 of the payment of the wages for the service, the term "employer" means the person who has control of
24 the payment of wages.
25 ~~(5)(4)~~ (4) "Federal workers' compensation legislation" means federal legislation that provides an
26 employee with compensation or remuneration for accidental injury or death. This legislation includes but
27 is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the
28 Defense Base Act.
29 ~~(6)(5)~~ (5) "Ongoing activities" means obligations or occurrences that are continuous, rather than
30 intermittent or occasional, that exist for a definite period of time during the year, or that are intended to

1 cover or apply to successive and similar obligations or occurrences.

2 ~~(7)~~(6) "Publicly traded limited partnership" means a business entity that issues shares or similar
3 ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders
4 on a public exchange recognized by the securities exchange commission.

5 ~~(8)~~(7) "State fund" means the state compensation insurance fund.

6 ~~(9)~~(8) "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax
7 provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from
8 accidents that occurred before July 1, 1990.

9 ~~(10)~~(9) "Wages" means all remuneration for services performed in the state of Montana by an
10 employee for an employer, including the cash value of all remuneration paid in any medium other than cash.
11 The term does not include remuneration paid:

12 (a) for casual labor not in the course of the employer's trade or business performed in any calendar
13 quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service
14 is performed by an individual who is regularly employed by the employer to perform the service. For
15 purposes of this subsection ~~(10)(a)~~ (9)(a), an individual is considered to be regularly employed by an
16 employer during a calendar quarter only if:

17 (i) on each of 24 days during the calendar quarter, the individual performs service not in the course
18 of the employer's trade or business for the employer for some portion of the day; and

19 (ii) the individual was regularly employed, as determined under subsection ~~(10)(a)(i)~~ (9)(a)(i), by the
20 employer in the performance of service during the preceding calendar quarter.

21 (b) for services not in the course of the employer's trade or business, to the extent that
22 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
23 and the payments are received by the employee at the request of and for the convenience of the employer;

24 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
25 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
26 the employee or the employee's dependents, and employees' club activities;

27 (d) as payments from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to
28 a qualified individual employee;

29 (e) as wages or compensation, the taxation of which is prohibited by federal law;

30 (f) as wages or compensation for services performed by Montana residents outside the borders of

1 the state of Montana."

2
3 **Section 25.** Section 39-71-2503, MCA, is amended to read:

4 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
5 employer, except an employer whose employees are covered by federal workers' compensation legislation,
6 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
7 old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

8 (i) for the preceding payroll period for employers subject to the payment schedule contained in
9 15-30-204(1);

10 (ii) for the preceding month for employers subject to the payment schedule contained in
11 15-30-204(2); and

12 (iii) for the preceding year for employers subject to the payment schedule contained in
13 15-30-204(3)(a).

14 (b) There is imposed on each employee, except an employee who is covered by federal workers'
15 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.
16 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the
17 wages.

18 (c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation
19 shareholder, on each partner of a partnership, and on each member or manager of a limited liability
20 company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each
21 separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder,
22 partner, or member or manager derived from ongoing activities.

23 (ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder,
24 partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

25 (iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this
26 subsection (1)(c).

27 (d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the
28 corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary
29 income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate
30 officer's wages.

1 (e) A corporate officer of a closely held corporation who owns stock in a closely held corporation
2 that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives
3 wages as an employee of the corporation is required to pay the old fund liability tax only on the wages
4 received. The corporation is not liable for the tax on the corporate officer's wages.

5 ~~(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred~~
6 ~~for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or~~
7 ~~bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans~~
8 ~~or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12 month~~
9 ~~period if the workers' compensation bond repayment account contains on the first day of that period an~~
10 ~~amount, regardless of the source, that is in excess of the reserve maintained in the account and that is~~
11 ~~equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest~~
12 ~~that must be paid during that period on the outstanding loans or bonds.~~

13 ~~(g)(f)~~ Each employer shall maintain the records that the department requires concerning the old
14 fund liability tax. The records are subject to inspection by the department and its employees and agents
15 during regular business hours.

16 ~~(h)(g)~~ An employee does not have any right of action against an employer for any money deducted
17 and withheld from the employee's wages and paid to the state in compliance or intended compliance with
18 this section.

19 ~~(i)(h)~~ The employer is liable to the state for any amount of old fund liability taxes, plus interest and
20 penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the
21 old fund liability tax required by this section.

22 ~~(j)(i)~~ A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member
23 or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and
24 penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state
25 the old fund liability tax required by this section.

26 (2) All collections of the tax must be deposited as ~~received in the account~~ provided for in
27 39-71-2321. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

28 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
29 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
30 remainder to the account provided for in 39-71-2504.

(b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the ~~account~~ state fund as provided for in ~~39-71-2504~~ 39-71-2321.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. The department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

Section 26. Section 39-71-2505, MCA, is amended to read:

"39-71-2505. Payment of unfunded for liability for injuries resulting from accidents occurring before or after July 1, 1990. (1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding

source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.

(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal year-end cash, and the projected fiscal year-end cash for the year 2007.

(b) ~~(i)(1)~~ There is imposed on each employer a workers' compensation old fund liability tax as provided in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding calendar quarter.

~~(ii)(2)~~ The employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding calendar quarter.

~~(iii)(3)~~ The Except as provided in subsection (5)(b), the old fund liability tax is an amount equal to 0.2% on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company.

~~(iv)(4)~~ The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

~~(v) (A) The employer~~ (5) (a) Except as provided in subsections (5)(b) and (5)(c), the old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007 on January 1, 1999, if, by October 15, 1998, the budget director certifies to the department that, based upon projections approved by the state fund board of directors, the claim reserve liability to surplus ratio of the state fund on June 30, 1999, will be less than 7.5 to 1.

(b) If, prior to October 15, 1998, the budget director receives projections approved by the state fund board of directors that the claim reserve liability to surplus ratio on June 30, 1999, is greater than 7.5

1 to 1, the budget director shall certify the need to continue the tax through June 30, 1999, and shall notify
2 the department no later than October 15, 1998, to collect the tax pursuant to this section. If the tax is
3 terminated pursuant to this subsection, the amount of tax imposed under subsection (3) is an amount equal
4 to 0.1%.

5 (c) If, prior to January 15, 1999, the budget director receives projections from the state fund board
6 of directors that the claim reserve liability to surplus ratio of the state fund on June 30, 2000, is greater
7 than 7.5 to 1, the budget director shall certify the need to continue the tax through December 31, 1999,
8 and shall notify the department no later than January 15, 1999, to collect the tax pursuant to this section.

9 (d) In determining the projected claim liability reserve to surplus ratio under this subsection (5), the
10 state fund shall include the estimated future amounts of the old fund liability tax through the estimated
11 termination date.

12 (e) Regardless of any projected claim reserve liability to surplus ratio required under this subsection
13 (5), the old fund liability tax terminates no later than January 1, 2000.

14 ~~(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are~~
15 ~~outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.~~

16 ~~(vi)(6) The old fund liability tax described in this section must be collected and deposited as~~
17 ~~provided in 39-71-2321 and 39-71-2503 and 39-71-2504.~~

18 ~~(3) If in any January the cumulative projected amount to be borrowed by the state fund from~~
19 ~~reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,~~
20 ~~1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,~~
21 ~~not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,~~
22 ~~the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the~~
23 ~~following fiscal year over the current tax rate. If in any January the projected fiscal year-end cash balance~~
24 ~~for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability~~
25 ~~tax must be reduced by 0.05% from the current tax rate for the following fiscal year.~~

26 ~~(4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.~~

27 ~~(5) The budget director shall certify the cash flow projections of the state fund required by this~~
28 ~~section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected~~
29 ~~pursuant to this section."~~
30

1 **Section 27.** Section 39-71-2905, MCA, is amended to read:

2 **"39-71-2905. Petition to workers' compensation judge -- time limit on filing. (1)** A claimant or
3 an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the
4 workers' compensation judge for a determination of the dispute after satisfying dispute resolution
5 requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a
6 pending action under 39-71-515 may request the workers' compensation judge to determine the amount
7 of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the
8 dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits
9 due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify
10 the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in
11 this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning
12 disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and
13 assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that
14 can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter
15 71.

16 **(2) A petition for hearing before the workers' compensation judge must be filed within 2 years after**
17 **the dispute arises or after benefits are denied, whichever occurs first.**

18
19 **NEW SECTION. Section 28. Transfer of funds.** The balance remaining in the workers'
20 compensation bond repayment account on June 30, 1997, must be deposited in the state fund as provided
21 in 39-71-2321.

22
23 **NEW SECTION. Section 29. Repealer.** (1) Sections 39-71-2351, 39-71-2352, 39-71-2354,
24 39-71-2355, and 39-71-2504, MCA, are repealed.

25 (2) Sections 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2505, and 39-71-2506, MCA, are
26 repealed.

27
28 **NEW SECTION. Section 30. Severability.** If a part of [this act] is invalid, all valid parts that are
29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
30 applications, the part remains in effect in all valid applications that are severable from the invalid

1 applications.

2
3 **NEW SECTION. Section 31. Retroactive applicability.** [Section 10] applies retroactively, within
4 the meaning of 1-2-109, to claims filed on or after March 27, 1973.

5
6 **NEW SECTION. Section 32. Effective dates -- applicability.** (1) [Sections 1, 2, 4 through 6, 14,
7 16, 17, 19 through 26, 28, and 29(1)] are effective July 1, 1997.

8 (2) [Sections 7, 8, 11 through 13, and 27] are effective July 1, 1997, and apply to claims for
9 injuries occurring on or after [the effective dates of sections 7, 8, 11 through 13, and 27].

10 (3) [Sections 3, 9, 15, and 18] are effective on the date that the budget director certifies that the
11 old fund liability tax is terminated pursuant to [section 26].

12 (4) [Section 29(2)] is effective January 1, 2000.

13 (5) [Sections 10, 30, 31, and 33 and this section] are effective on passage and approval.

14
15 **NEW SECTION. Section 33. Contingent termination.** [Sections 14 and 17] terminate on the date
16 that the old fund liability tax is terminated pursuant to [section 26].

17 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0067, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising workers' compensation laws: Increases Board to seven members and one member may be an insurance producer; provides for merging Old and New Fund accounts; provides a contingency for terminating old fund liability tax on 1/1/99; requires assumption of the Old Fund claim liability by the State Fund; clarify definition of "dependent" for fatal injury beneficiary claims; clarifies insurer's failure to meet time limits is not acceptance of claim; increases compensation for permanent partial disability; provides for worker, not reaching maximum healing, but released by treating physician and refusing offer of employment in alternative position at equal or higher wages is not eligible for temporary partial disability benefits; increase access to rehabilitation benefits; authorizes "other states" coverage; clarifies use of licensed insurance producers; requires State Fund repay \$20 million to general fund; clarifies types of administrative expenditures related to State Fund's 15% limit; limits time for resolving benefits dispute; requires State Fund and Department of Justice to file a joint biennial budget request for workers' compensation fraud office; provides for transfer of balance of workers' compensation bond repayment account to State Fund on 6/30/97.

ASSUMPTIONS:

Increasing Board Size:

1. The current State Compensation Insurance Fund Board has five members and will add two additional members, increasing board membership to seven.
2. Membership of the increased board will be structured as follows: at least four of the seven members must represent State Fund policyholders and may be employees of State Fund policyholders; at least four members of the board shall represent private, for-profit enterprises; and, one of the seven members may be a licensed insurance producer.
3. The State Fund Board of Directors meets twelve times a year.
4. Each board member is entitled to a \$50 per diem and reimbursement for travel, lodging, and meals, at state rates. Assuming \$150 per board member per meeting in costs including per diem, this will increase annual expenditures for the board \$3,600 for each year of the biennium.

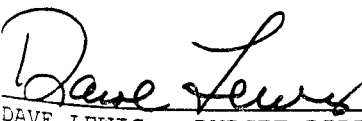
Workers' Compensation Fraud:

5. The State Fund and the Department of Justice shall jointly submit to the legislature a biennial budget request for the Workers' Compensation Fraud Office.
6. The proposed budget for staff and related expenses will be based on the needs of the State Fund for investigating and prosecuting workers' compensation insurance fraud.
7. The Workers' Compensation Fraud Office will staff one or more investigators and one or more prosecutors.
8. All funding for the Workers' Compensation Fraud Office is provided by the State Fund as generated through premium income.
9. Licensed insurance producers are required to notify the State Fund's Fraud Detection and Prevention Unit of alleged fraud within 60 days.

Policyholder Services:

10. The State Fund may contract with licensed resident insurance producers.
11. Insurance producers will be local ombudsmen for policyholders and provide enhanced services.
12. These policyholder services are normally provided by state fund insurers. The State Fund will use the existing expertise of licensed insurance producers in the private sector.

(Continued)

 1-14-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 1/14/97
STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0067, as introduced

SB 67

13. Insurance producers will receive commissions on policies placed with the State Fund. It is estimated that commission expenditures for fiscal 1998 will be \$151,679 and fiscal 1999 will be \$1,045,224. This is based on a 5% commission.
14. The net impact for fiscal 1998 is \$104,900 and includes: \$3,033,573 in new premiums produced by agents; less \$2,602,122 benefit payments and loss adjustment expense on that business; and less \$326,551 for commissions, agent incentive plan, State Fund expenses, and agent training costs.
15. The net impact for fiscal 1999 is \$1,189,431 and includes: \$20,904,475 in new and renewal premiums produced by agents; less \$17,931,334 benefit payments and loss adjustment expense on that business; and less \$1,783,710 for commissions, agent incentive plan, State Fund expenses, and agent training costs.
16. Other states coverage is a new service the State Fund may offer to policyholders. The State Fund may enter into agreements with workers' compensation insurers to coordinate workers' compensation coverage in other states to Montana-domiciled employers insured with the State Fund. The fiscal impact is neutral.

Merging Old and New Funds:

17. The State Fund shall assume full liability for the administration and payment of claims of the Old Fund.
18. The State Fund will receive Old Fund Liability Tax (OFLT) collections through at least December 31, 1998. All assets and liabilities in the Workers' Compensation Bond Repayment Account will be transferred to the State Fund on June 30, 1997.
19. The distinction between program 01 (New Fund) and program 02 (Old Fund) will be eliminated.
20. The State Fund will no longer keep separate accounting and program records for the Old and New Funds. This will create some administrative overhead savings.
21. The bill provides contingency language for terminating the Old Fund Liability Tax (OFLT) after January 1, 1999, but no later than January 1, 2000. The State Fund anticipates terminating the OFLT on January 1, 1999.
22. Merging of the Old Fund and New Fund is projected, by State Fund staff, to provide for termination of the OFLT on January 1, 1999. This will save an estimated \$74.2 million in OFLT collections which would not result without the merger (\$60.4 million employers; \$10.1 million employees; and \$3.7 million self-employed/sole proprietor).
23. Upon termination of the OFLT the State Fund Board will have the authority to declare dividends, payable to policyholders, if there is an excess of assets over liabilities.
24. The OFLT revenues, as projected by State Fund staff, are anticipated to be \$123.9 million between July 1, 1996 and December 31, 1998. This breaks down to \$48,427,000 during fiscal 1997, \$49,857,000 during fiscal 1998, and \$25,665,000 during the first half of fiscal 1998. (The anticipated OFLT revenues for fiscal 1999 if the OFLT were to continue through June 30, 1999, would be \$43,477,000. If the OFLT is retired on January 1, 1999, then \$17,812,000 would not be collected [\$43,477,000 - \$25,665,000].)
25. The fund balance of the New Fund was \$231.4 million as of June 30, 1996. This does not reflect the dividend from the New Fund to the Old Fund of up to \$109 million declared September 24, 1996.
26. The fund balance of the Old Fund was (\$355.1 million) as of June 30, 1996. This does not reflect the dividend from the New Fund to the Old Fund of up to \$109 million declared September 24, 1996.
27. The combination of New Fund surplus and OFLT collections through December 31, 1998 will be required to maintain a merged State Fund with a projected, June 30, 1999, claim reserve liability to surplus ratio of 7.5 to 1 or less. The projection of this ratio will occur prior to October 15, 1998.
28. The estimated claim liability reserves of the merged State Fund would be: July 1, 1997, \$452 million; July 1, 1998, \$433 million; and July 1, 1999, \$423 million.
29. The estimated surplus of the merged State Fund would be: July 1, 1997, \$5,505,998; July 1, 1998, \$49,463,355; and July 1, 1999, \$69,387,203.
30. The claim liability reserves to surplus ratios are estimated to be: July 1, 1997, 82.15 to 1; July 1, 1998, 8.77 to 1; and July 1, 1999, 6.10 to 1.

31. These estimates include \$20 million in payments to the general fund, \$10 million to be paid in both fiscal 1998 and fiscal 1999.

32. Currently, Old Fund claim reserves are presented on an undiscounted basis. Upon merger, the Old Fund would have invested assets to pay Old Fund claims as they come due. Therefore, the Old Fund claims reserves are discounted. The discounting effect generates the majority of the difference between the current fund structure and a merged fund.

33. The decrease in the difference is the surplus of the merged fund from fiscal 1998 to fiscal 1999. Under the current law, the Old Fund would collect an estimated \$43,477,000 in OFLT in fiscal year 1999. Under the proposed law, the merged fund would collect an estimated \$25,655,000 in OFLT.

\$20 Million Repayment To General Fund:

34. During the June 1989 Special Session the general fund was appropriated \$20 million to the State Fund to address the unfunded liability issue existing in the Old Fund. This action canceled a planned 22% rate increase. To remove any perception that the State Fund is a burden to the general fund, the State Fund shall re-pay to the general fund \$10 million in fiscal 1998 and \$10 million in fiscal 1999.

35. The primary source of State Fund revenue is earned through payments of premium by policyholders.

36. The primary source of Old Fund revenue is the Old Fund Liability Tax.

37. The merged State Fund fund balance is reduced by \$21,758,000. This includes the loss of investment income on \$20 million at an estimated 5.75% annual rate of interest for the biennium.

38. Merged State Fund fund balance would be an estimated \$91,145,203, on July 1, 1999, without the \$20 million general fund repayment. The reserve to surplus ratio would be 4.64 to 1.

Administrative Expenditures:

39. Current law administrative expenditures are limited in 39-71-2363(2), MCA. It states, "The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year."

40. The Legislative Audit Division performs an annual financial and compliance audit of the State Fund. This audit includes a check of compliance of the 15% administrative ratio.

41. The term "administrative expenditures" is not clearly defined in statute. At the request of the State Fund Board of Directors the Legislative Audit Division reviewed the items currently included in administrative expenditures. In a letter dated August 6, 1996, the Legislative Audit Division concurred with the reasonableness of the items currently included in administrative expenses of the State Fund.

42. Current law administrative expenses for fiscal 1998 are projected to be \$12,805,934. Estimated prior year premium is \$86,729,653. This is a 14.76% administrative expense ratio.

43. Current law administrative expenses for fiscal 1999 are projected to be \$14,456,561. Estimated prior year premium is \$80,895,276. This is a 17.87% administrative expense ratio.

44. Passage and approval of the Old Fund and New Fund merger will add \$3 million to fiscal 1998 administrative expenses and \$1.8 million to fiscal 1999 administrative expenses. These amounts will increase the expenses used in the calculation of the administrative expense limit. The State Fund will no longer allocate expenditures for administering the Old Fund (39-71-2352(2)(a), MCA).

45. Passage and approval of the use of licensed insurance producers will add \$151,679 to fiscal 1998 administrative expenses and \$1,045,224 to fiscal 1999 administrative expenses in commissions paid.

46. Under current law, the fiscal 1998 and fiscal 1999 administrative ratios will be 18.40% and 20.61% respectively, upon passage and approval of the Old Fund and New Fund merger and use of licensed insurance producers.

47. Prior year earned annual premium and investment income will be used to determine the administrative expenditure ratio. The current process includes only prior year premium.

48. Premium has declined from a high of \$182.4 million in fiscal 1994 to an estimated \$86.7 million in fiscal 1997. Approximately \$60 million of this premium decrease is attributable to rate reductions. There have been two rate reductions decreasing premium revenue by 35% over the last two years.

49. As of October 1, 1996, State Fund caseloads per adjuster were 144 open wage loss claims per adjuster. Other state funds and Montana insurers and claim administrators are targeting 100 wage loss claims per adjuster as a standard.
50. The number of State Fund policyholders has remained stable from fiscal 1994 to present. The State Fund had 26,103 policyholders in fiscal 1994. As of January 1, 1997, the State Fund has 24,990 policyholders.
51. Estimated investment income is \$30,452,000 for fiscal 1997 and \$29,807,000 for fiscal 1998.
52. The proposed legislation will exclude allocated loss expenses, for claim management, from administrative expenses. Allocated costs are estimated at \$1,4570,744 in fiscal 1998 and \$1,501,476 in fiscal 1999. This is current State Fund practice.
53. The proposed legislation will exclude unallocated loss expenses, for claim management, from administrative expenses. Unallocated costs are estimated at \$4,007,217 in fiscal 1998 and \$4,127,433 in fiscal 1999.
54. The proposed legislation will exclude capital asset expenditures, except for capital asset depreciation expense, from administrative expenses. Capital asset expenditures to be excluded are estimated at \$1,065,295 in fiscal 1998 and (\$411,972) in fiscal 1999. This is current State Fund practice.
55. The proposed legislation will exclude costs of licensed insurance producers. Agents costs are estimated to be \$151,679 in fiscal 1998 and \$1,045,224 in fiscal 1999 for commissions paid.
56. The proposed legislation will exclude any dividend payments declared by the Board of Directors. This is not a cost of administering the State Fund.
57. Upon passage and approval of this legislation, the fiscal 1998 administrative expenses are estimated to be \$11,798,717 with an administrative expense ratio of 10.07%. The fiscal 1999 administrative expenses are estimated to be \$12,129,128 with an administrative ratio of 10.66%.

Benefits and Claims:

58. Clarifies definition of "dependent" for fatal injury beneficiary payment. Does not impact level of benefit payment.
59. Failure of an insurer to accept or deny a claim for compensation within 30 days of receipt of the claim does not constitute acceptance of the claim. This assists in protecting the policyholders. Fiscal impact cannot be determined.
60. Insurers who fail to comply with the 30 day requirement (39-71-608, MCA) may be assessed a penalty by a workers' compensation court judge (39-71-2907, MCA) if the claim is determined to be compensable by the workers' compensation court. This assists in protecting claimants. Fiscal impact cannot be determined.
61. The increase in compensation for permanent partial disability has been estimated by the National Council on Compensation Insurance (NCCI). NCCI determined the overall impact of this proposed change to be +2.7% on the total system costs. That equates to an increase in fiscal 1998 benefits paid of \$224,423, and an increase in fiscal 1999 benefits paid of \$791,793.
62. A worker who has not reached maximum healing but has been released by a treating physician and refuses the offer of employment in a modified or alternative position at equal or higher wages with the same employer is not eligible for temporary partial or temporary total disability benefits. This provides incentive to workers to accept equal wage employment. Reduces claimant benefit payments. Reduces impact on employers loss experience. Fiscal impact cannot be determined.
63. The proposed legislation provides for workers with whole person impairment ratings of 15% or more to be eligible for rehabilitation benefits. NCCI was requested to estimate the cost of increasing access to rehabilitation benefits. NCCI determined that the impacts on the total system +0.2%. That equates to an increase in fiscal 1998 benefits paid of \$17,602 and an increase in fiscal 1999 benefits paid of \$62,102.
64. A petition for hearing before a workers' compensation court must be filed within two years after the dispute arises or benefits are denied, whichever occurs first.

(Continued)

FISCAL IMPACT:

This legislation has a multitude of expenditure and revenue impacts. The net impacts of each area of the bill has been estimated below. The individual areas of this bill itemized below do not total to the net impact of this legislation.

Net Impact:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
State Fund Accounts:		
Increase Board Membership	\$3,600	\$3,600
Policyholder Services	\$104,900	\$1,189,431
OFLT Collections	\$0	(\$17,812,000)
Repayment of \$20 Million	(\$10,000,000)	(\$11,183,000)
Benefits and Claims	(\$242,025)	(\$853,895)
Merged Fund Surplus	\$36,168,462	\$2,510,516
General Fund:		
Net Impact of Fund Balance	\$10,000,000	\$10,000,000

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Elimination of the OFLT prior to statutory repeal in fiscal 2007.

SENATE LABOR & EMPLOYMENT RELATIONS

Page 2

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0519	WYATT, DIANA	CERTAIN ADVANCED PRACTICE REG. NURSE AS TREATING PROVIDER FOR WORK COMP	3/06	3/18	TABLED	3/20	CONCUR AS AMENDED	3/27	VOTE: 5-4	4/04
HJ0010	HIBBARD, CHASE	OPTIONAL APPROACHES TO RESOLVING EMPLOYMENT DISPUTES	2/11	3/04			CONCUR	3/06	VOTE: 9-0	3/07
SB0003	NELSON, LINDA	REVISE INDEPENDENT CONTRACTOR EXEMPTION AND REGISTRATION FEES	12/27	1/07	01/21		TABLED ON	1/31	VOTE: 8-1	
SB0005	HOLDEN, RIC	REPEAL CONTRACTOR REGISTRATION	12/27	1/09	01/21		TABLED ON	1/31	VOTE: 9-0	
SB0041	BENEDICT, STEVE	TRANSFER JURISDICTION TO WC COURT AND ELIMINATING UNDERINSURED STATUTES	1/03	1/28			PASS AS AMENDED	2/06	VOTE: 7-0	2/11
SB0045	HOLDEN, RIC	REVISE CONTRACTOR REGISTRATION	1/03	1/09	01/21	01/30	PASS AS AMENDED	2/04	VOTE: 8-1	2/07
SB0062	SPRAGUE, MIKE	CLARIFY PAYMENT OF REHABILITATION BENEFITS TO DISABLED WORKERS	1/03	1/14			PASS AS AMENDED	1/23	VOTE: 9-0	1/24
SB0067	BENEDICT, STEVE	REVISION OF WORKERS' COMPENSATION LAWS	1/03	2/15			PASS AS AMENDED	2/15	VOTE: 9-0	2/18
SB0098	THOMAS, FRED	AUTHORIZING BOARD OF REGENTS TO ELECT COVERAGE UNDER PLAN NO. 1, 2, OR 3	1/03	1/16			PASS AS AMENDED	2/04	VOTE: 6-3	2/06
SB0120	MAHLUM, DALE	EXCEPTION FOR PAYMENT OF UNPAID WAGES COVERED BY EMPLOYER'S POLICY MANUAL	1/03	1/16			PASS AS AMENDED	1/23	VOTE: 9-0	1/24
SB0185	LYNCH, J. D.	ELIMINATE THE OLD FUND LIABILITY TAX ON EMPLOYEES/EMPLOYERS ON JAN. 1, 1998	1/16	1/23			TABLED ON	2/04	VOTE: 6-2	
SB0225	DEVLIN, GERRY	ELIMINATE MANDATORY ARBITRATION ON IMPASSE FOR FIREFIGHTERS AND EMPLOYERS	1/25	2/11			NO ACTION TAKEN		VOTE:	

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN THOMAS KEATING, on January 28, 1997,
at 1:00 P.M., in 325

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Eddye McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 41 & SB 67; 1-17-97
Executive Action: None

HEARING ON SB 41

Sponsor: SENATOR STEVE BENEDICT, SD 30, Hamilton

Proponents: Chuck Hunter, Department of Labor & Industry
Nancy Butler, State Fund
George Wood, Montana Self-Insurers' Association

Opponents: None

Opening Statement by Sponsor:

SENATOR STEVE BENEDICT, SD 30, Hamilton, said SB 41 is a
housekeeping bill brought forward by the Department of Labor &
Industry. First, it streamlines the process for insurers and
injured workers to resolve claims by removing the Department from

Nancy Butler, State Fund, (inaudible opening statement of testimony) settle that subrogation claim with the claimant's heirs, that they are deceased. The two sections are inconsistent, the amendments make them consistent. (EXHIBIT 3)

George Wood, Montana Self-Insurers' Association supports this legislation and commends the Department for suggesting legislation that does away with needless sections of law, repeals them and amends other sections to make them more affective and workable. For this reason they request a "do-pass" on SB 41.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

CHAIRMAN KEATING asked SEN. BENEDICT in regards to the two funds, underinsured and uninsured, if this disposes the underinsured fund. That presumes there is a balance of funds in the fund. He asked what that balance is. SEN. BENEDICT responded he cannot tell what the balance is, but he can tell him what will happen to the balance. The balance of the underinsured fund will go into the uninsured fund. CHAIRMAN KEATING said that fund has a balance, what will be the total balance of that fund when the transfer is made? Chuck Hunter responded that he cannot give an exact dollar figure and could find it within a matter of moments, but it is somewhere in essence it is about \$1 million or \$1,100,000. CHAIRMAN KEATING asked if that was the total in the uninsured fund. Mr. Hunter responded that is correct.

Closing by Sponsor:

SEN. BENEDICT commends this bill for the Committee's consideration and asks for a "do-pass" on SB 41.

HEARING ON 67

Sponsor: SENATOR STEVE BENEDICT, SD 30, HAMILTON

Proponents: Carl Swanson, President of State Fund
Mick Robinson, Representing Governor Rasciot
Don Allen, Coalition Workers' Compensation System Improvement
Russ Ritter, Washington Corporation of Missoula
David Owen, Montana State Chamber of Commerce
Riley Johnson, National Federation Independent Business
Roger McGlenn, Independent Insurance Agents of Montana
Dan Hutchings, Montana Building Industry Association
George Wood, Montana Self-Insurers' Association
Keith Olson, Montana Logging Association
Ben Havdahl, Montana Motor Carriers' Association
Jacqueline Lenmark, American Insurance Association
Aidan Myhre, Rehabilitation Association of Montana

Debbie Berney-Taylor, Professional Insurance Agents
of Montana
Bob Worthington, Montana Municipal Insurance
Authority
Ray Barnicoat, Montana Association of Counties
Leo Ward, Montana Schools Group Insurance Authority
Chuck Hunter, Department of Labor & Industry
Bill Crivello, Crawford & Company Rehabilitation
Charles Brooks, Billings Chamber of Commerce

Opponents: Jerry Driscoll, Montana Building Trades Council
Russell Hill, Montana Trial Lawyers Association
Don Judge, Montana State AFL, CIO
Sue Weingartner, Alliance of American Insurers
REP. ROYAL JOHNSON, HD 10, Billings

Opening Statement by Sponsor:

SEN. STEVE BENEDICT, SD 30, Hamilton, presented SB 67 with pleasure. He stated he felt as if he wore a bullseye on his back when he presented the employer-employee payroll tax in 1993 to this Committee after having shepherding it through the House. He has never supported, much less carried a tax increase, so it was a very onerous, black day for SEN. BENEDICT when he agreed to sponsor the payroll tax, a half a billion dollar tax on the employers and employees of this state in order to bail out the ailing Workers' Compensation System Old Fund. At that time he remembers telling the members of this Committee that payroll tax would run until approximately the years 2006 to 2007. They have, in the last three years, made remarkable progress in the health of the New Fund, and they have brought the health of the Fund to the point where he can come before the Committee today and ask to eliminate the payroll tax on employers and employees by December 31, 1998. SEN. BENEDICT said that would make him a very happy legislator.

SB 67 eliminates the payroll tax on employers and employees by December 31, 1998. It merges the Old and the New Funds. It repays \$20 million to the General Fund. It allows the calculation of investment income and operational expense. It allows the State Fund to contract with licensed insurance agents for the sale of State Fund insurance policies. It increases the State Fund board of directors to seven from the present five. It provides State Fund customers with the option of multi-state coverage. It allows the State Fund to prepare a joint fraud office budget with the Department of Justice and Department of Labor, and under some amendments which are being proposed also brings in the Department of Labor. It also has some provisions for some housekeeping measures to clean up some statutes.

There were provisions in this bill when it was pre-filed, for increases and permanent partial wage loss and greater access to vocational rehabilitation. The amendments SEN. BENEDICT will propose also take out those increases and permanent partial wage

loss and the vocational rehab. pieces of the bill as they could not get consensus from all three plans on those components. He has the amendments prepared, and along with the amendments are a synopsis of the amendments. (EXHIBITS 2 & 3) He apologizes to the Committee for bring a bill which will require several pages of amendments, but he thinks everybody on this Committee is aware of the opportunity that the legislators have had to try to get as many bills as possible pre-filed. In their gusto to do that, he is not sure the intensive consequences were foreseen. That is if you pre-file a bill, that bill goes into drafting before it has a chance to have a lot of input.

SEN. BENEDICT took the pre-filed bill to as many people that are part of the Workers' Compensation system and to many of the people who have interest in Work. Comp. issues and ask for consideration of the bill and whether or not they had any changes they would like to see in the bill. Then they prepare the amendments. He commends the bill along with the amendments and he would like to have Carl Swanson from the State Fund explain the bill further.

{Tape: 1; Side: A; Approx. Time Count: Approximately 1:13 p.m.}

Proponents' Testimony:

Carl Swanson, President of State Fund, presented his testimony. (EXHIBIT 4)

Mick Robinson, Representing Governor Racicot, strongly supported SB 67. (EXHIBIT 5)

{Tape: 1; Side: A; Approx. Time Count: Approximately 1:36 p.m.}

Don Allen, Coalition Workers' Compensation System Improvement, supported SB 67. He remembers back four years ago, prior to the session when the Coalition first came together, that people were angry, people were upset in every way both from an employer's standpoint, and from an employee's standpoint. Employers were upset that they could not control costs, employees were unhappy because they were not able to receive deserved raises. They could not get answers from the State Fund, they could not get their telephone calls promptly attended to. The Coalition, along with other groups that had an interest on behalf of other people, employers, employees, tried real hard to address these issues. The goals of the Coalition were get cost under control, to get responsible, effective, and accountable management at State Fund. to try to do something about premium costs which were going out To try to make the state more competitive, to get the private sector back into the state. The concern over safety was one which was shared by everyone and the Safety Culture Act addressed that, medical costs of the managed care approach to spend being pursued, and last but not least, the fraud issue. This issue had to be addressed and Mr. Allen thinks it has been effectively.

Mr. Allen said the overall issue was that they wanted to have a system that was healthy, that would inspire competition, would get the private sector back, and result in an opportunity for some things to be different.

The size of the State Fund at that time certainly was much larger. In the minds of many it was too large. They thought the State Fund has too big of share of the market. There was not any incentive for private sector to come back in it. He pointed out that members of the Coalition are not just State Fund policy holders, but also Plan 1 and Plan 2 policy holders. They have monitored meetings of the State Fund and **Mr. Allen** gives credit to **Gov. Racicot** and the State Fund board which has been there since changes were put in place to allow them to operate like a business. They have made a lot of progress and as result, this took away some of the anger and feelings which existed four years ago.

SEN. BENEDICT talked about the "target on his back", and **Mr. Allen** said he does not know of anyone in this state who was happy about that payroll tax. He believes this bill shows light at the end of the tunnel and sets a date for this tax to come off and he believes this is something, along with premium decreases, will inspire more confidence in other companies to stay competitive. He believes the State Fund is in good shape right now, it is being run well, and he also believes this bill will put in place some things to improve things further. When this bill was first announced, **Mr. Allen** said there was a lot of concern as many of there members said things were working pretty good right now and didn't want to rock the boat and make any changes. The Coalition was not willing to sign off on this bill until they could see exactly what the changes were. They believe **SEN. BENEDICT'S** amendments will improve the bill and they hope the Committee will give this bill a "do-pass".

Russ Ritter, Washington Corporation of Missoula, was present in support of SB 67. He stated he was there to represent Washington Corporation as a customer of the State Fund. Four years ago, **Mr. Jim Brouelette**, Director of Human Relations of Washington Corporation, was appointed to the board at State Fund and has served in that capacity as a member since that time. **Mr. Ritter** said he has had the opportunity on a meeting-by-meeting basis, to visit with **Mr. Brouelette** to see the kinds of things that were taking place and the direction which the State Fund was taking over the past four years. **Mr. Brouelette** was on both sides of that issue simply because he represented management and he also represented the workers in his own profession. So he heard on both ends as to what was good and what was bad.

Mr. Ritter stated that most of everything which has happened in the past four years has certainly been beneficial to taking the State Fund into 21st Century. The access which has been made available both to the employer and the employees is commendable. It is really a success story, and he is here on behalf of

Washington Corporation to say they believe the State Fund has done many things right. They believe SB 67 is a step in the right direction, they see it is a positive step forward, it will continue to make the State Fund competitive, and then continue to reduce those rates.

David Owen, Montana State Chamber of Commerce, was present not only to support SB 67 but also to salute a rather remarkable achievement in the turn-around of Workers' Compensation in Montana, particularly at the State Fund. It will be an enormous relief to the Montana Chamber to bring to an end the Old Fund liability tax. They were involved in that a number of years ago and it was not easy. The tax being removed early is certainly good news. They have seen remarkable achievement which has not only been getting rid of this tax, but it has brought premiums down.

Mr. Owen said there was an assertion made in a previous hearing, that this is somehow the business community getting away with something because they are now paying less for Workers' Comp. This is a little bit ludicrous. There is a limited amount of money that can go from his members to employees. It is infinitely better that it go to them in the form of wages than to get siphoned off to provide for required benefits. Unfortunately, this reduction is fairly new and we do not have statistics so he cannot quote a migration to higher pay. In fact, the statistics which are still there that we hear many indicate there is some wage stagnation. As he travels the state twice a year, he is hearing people bidding up labor in some pretty dynamic labor areas which cannot be done if there is an oppressive level of Workers' Compensation premiums. There was also some reductions in benefits which he commends the legislature for. It was not easy to be an advocate for those.

Mr. Owen said we have a benefit package now which is comparable to other states and is fair. It has helped them relieve the burden of high premiums on their members. He commends the State Fund administration and they support them in the strongest endorsement that they could give for that is removing the 15% cap. **Mr. Owen** said he works with a group of people who are not easy to serve. Much of the private sector aren't that interested. They do not have many employees and not a lot of money. For them to receive the kind of service they would like them to have, the State Fund is going to need the flexibility. **Mr. Owen** believes this is a sign that this business community has faith in this administration to support altering those definitions and addressing that cap. They commend this bill and its sponsor.

Riley Johnson, National Federation of Independent Business, said they started a process in 1993 and asked the legislature that the State Fund be run like a business. They got what they asked for. They then asked the State Fund to get out of "red ink", and they got that. They also asked increased customer service and

satisfaction and got that. They asked for reduced rates and got that. They asked for a handle on fraud and got it.

Mr. Johnson stated they now stand in support of this administration and the State Fund asking that they get a few more steps. They are asking for an elimination of the Old Fund liability tax and obviously a paperwork reduction which this will result in. Secondly, they are asking for a privatization of a state function meaning the independent agents having the ability to market the State Fund product. Finally, we are asking for the all-state endorsement. A lot of their companies operate in other states and this would be major help to them. For those reasons, **National Federation of Independent Business** stands in complete support of SB 67.

Roger McGlenn, Independent Insurance Agents of Montana, stands in support of SB 67. (EXHIBIT 6)

{Tape: 1; Side: B; Approx. Time Count: Approximately 1:50 p.m.;
Comments: The taped was turned from Side A to Side B, in the process the next Proponent, Dan Hutchings' name and introduction was not recorded..}

Dan Hutchings, Montana Building Association, stated members of his organization commend the efforts of State Fund over the past few years in their turn from the past direction. They would like to support SB 67 and its proposed amendments.

George Wood, Montana Self-Insurers' Association, supported SB 67 as amended. It has already been adequately explained by members of the community interested in Workers' Compensation. There is a feeling that State Fund has turned a corner and has had a remarkable improvement in their relationships with the business community and with the claimant. For this reason, they suggest we give them the tools they request to increase their efficiency and effectiveness in maintaining and managing the State Fund. For this reason they request a "do-pass".

Keith Olson, Montana Logging Association, stood in support of SB 67.

Ben Havdahl, Montana Motor Carriers' Association, also supports SB 67.

Jacqueline Lenmark, American Insurance Association, stated the association she represents is comprised of 250 property and casualty insurers who write Workers' Compensation insurance in Montana. They support SB 67. This bill covers three general areas. First are the case procedural changes included in this bill. They strongly support those changes. The bill also covers a number of operational changes for the State Fund. **American Insurance Association** has two strong overriding policies with regard to Workers' Compensation. The first is that an employer choose the insurer of his or her choice. The second and very

strong policy of her association is that they want to assist in the establishment and maintenance of strong competitive State Funds which can also serve as the market of last resort in the states in which they operate. They view the operational changes in SB 67 as heading in that direction.

Ms. Lenmark said she hopes that someday she will stand before this committee and testify as a proponent on a bill that says the State Fund will operate under the same regulatory authority as the private insurers and that it will meet all of the same standards as private insurers, that we will all work in the same environment. This bill heads in that direction and because of that the **American Insurance Association** hopes the Committee will give this bill a "do-pass" recommendation so that the Fund can continue its good track record of the past couple of years in improving its stability and operation.

There are two specific operational changes in the bill **Ms. Lenmark** addressed, because **Carl Swanson** specifically asked for the input of her association. The first is the other states' coverage. They do support the provision which is in the bill on other states' coverage. It is still possible she will bring to this committee or to the sponsor some requested amendments about language changes but certainly they strongly support that particular measure of the bill. The other area she is compelled to comment on is that a number of proponents have commented about rate reduction. Her association would like to implore this committee to always take measures to insure rate adequacy. It is important to have affordable rates for employers, but if those rates are not adequate and if measures are not always taken to insure that rate adequacy, they will be faced again with the same problem they have just struggled out of over the past four years. They recommend a "do-pass" on SB 67.

Aidan Myhre, Rehabilitation Association of Montana, said the organization she represents are rehabilitation professionals which work in the private sector and work closely with the Workers' Compensation providers, along with the employers and injured workers to facilitate a return-to-work process. This association offers support of SB 67 and urges the members of the Committee to pass the bill.

The **Rehabilitation Association of Montana** has submitted an amendment through **Sen. Benedict** and through the **State Fund**, which addresses one minor, technical change on page 14, line 26 they request that the definition of light labor activity be modified in order to be consistent with an industry-wide reference known as the Dictionary For Occupational Titles. The rehabilitation professionals along with the medical community and occupational specialists rely on this dictionary and believe there should be some harmony between the Workers' Compensation Act and this reference dictionary. They support cost effective and quality rehabilitation services. They also understand the debate of expanding access to rehabilitations and they want to clarify in

its original form, this bill did open up access to rehabilitation to a group of individuals who might not have otherwise been able to, a group of individuals with a 15% impairment and with no wage loss.

The **Rehabilitation Association** believes that this would not have been added a significant number of individuals which would be accessing rehabilitation, it would not have added significant cost, also they understand the debate and are sensitive to this issue. In conclusion, she is open for questions and they support SB 67 as amended.

Debbie Berney-Taylor, Professional Insurance Agents of Montana, stated they were in support of this bill in that they are competitors of the State Fund with their own small Workers' Compensation program. Regardless, they believe it is very important this bill pass in order to keep the State Fund a viable, competitive fund.

Bob Worthington, Montana Municipal Insurance Authority, said they are comprised of 95% of the city and town employees across the state and are a Plan 1 insurer. They know the Workers' Compensation system has come a long ways in the past four years. A great part of that success is attributed to the number of pieces of legislation from the past. This piece allows the State Fund to be competitive in the market place or more competitive, which is one of the keys to a strong system. For that reason, the **Montana Municipal Insurance Authority** supports SB 67 as amended.

Ray Barnicoat, Montana Association of Counties, stated they rise in support of SB 67 because they believe that by combining the Old and the New Funds into the State Fund and eliminating the Old State Fund tax, county governments across the state can save substantial sums of money. They also feel the bill addresses the issue of time limitations on acceptance of a claim, being a Plan 1 insurer, they feel the language which is proposed there is language that is reasonable and fair to an insurer. They ask for a "do-pass" on this bill.

Leo Ward, Claim Counsel for the Montana Schools Group Insurance Authority, which is the self-insurance pool which represents most of the school districts in Montana, supports SB 67.

Chuck Hunter, Department of Labor, supports this bill as well, primarily for the part of the bill which is connected to the Department of Labor, the ability to prosecute fraud cases arising through the Uninsured Employers' Fund, which are spoken to in the sponsor's amendments. Secondly, the point in which there is a specific time period in which people bring disputes into the comp. system. They manage those dispute resolution mechanisms. That time frame which is specified is a better language in the system. For those reasons, they support SB 67.

Bill Crivello, Crawford & Company, which is a rehabilitation firm providing services to Workers' Compensation insurers throughout the state said he is not representing anyone's interests but would like to make a couple of observations from a professional perspective. In the original language of **SEN. BENEDICT'S** bill there was a provision for what is being considered an expansion of rehab. benefits, which would basically have opened a door or a potential door for individuals with significant disabilities who did not experience a wage loss. His observation, and that of many of his peers is that there are not that many people who experience that significant of a disability for whom that door would be opened. Therefore, from a common sense perspective from those in **Mr. Crivello's** industry, that they do not see that as that big of an expansion. He believes this is a common sense approach to a better law and should be considered. The other provision on page 14 which has to do with the definition of light duty is a typographical error made six years ago and it continues to be politically debated and evaluated and not corrected because it is not politically correct to do so. If you correct it, you will be criticized for reducing benefits to injured workers. If you do not, you will be criticized for expanding it. The reality is it is a typographical error that needs correcting.

Charles Brooks, Billings Chamber of Commerce, was present to support SB 67 as amended.

{Tape: 1; Side: B; Approx. Time Count: Approximately 2:06 p.m.}

Opponents' Testimony:

Jerry Driscoll, Montana Building Trades Council, said he voted for the payroll tax and the result has been every session since to reduce benefits. Page 12 and 13 of the bill states a claim must be accepted or denied within 30 days, except in the new language. If this is not done, a person can go to Workers' Compensation court and if the claim is found compensable, there may be an assessment to the injured worker. **Mr. Driscoll** stated it takes over a year to get to that court. During that year, he guessed the worker just starves.

The amendment which is offered states "increasing permanent partial benefits" in the title. One of the amendments offered eliminates that. The language is on page 14. On page 16, if you had 15% impairment to the whole body you can receive rehabilitation if you have no wage loss, was eliminated by another amendment offered this day. In a meeting earlier today, before the session began, with claims examiners from the private sector he asked for an example of 15% to the whole body. The answer was, "comatose". On page 19 and 20 is where the \$20 million is paid back. In 1989, in a special session, under motions this special session was expanded to include Workers' Compensation. **REP. DOROTHY BRADLEY** and **SEN. BRUCE CRIPPEN** had a bill to accelerate tax collections in which the money was to be used to build new buildings at the University System. On the

last night, **Mr. Driscoll** made a motion to give the \$20 million to Workers' Comp. In that debate, it was expected that some day they would pay it back. It was not in writing, but one of the discussions from the floor. Then they want to eliminate the 15% cap on administrative costs. The Chairman of the Board, now **Congressman Rick Hill**, voted against that. It is in the minutes of the Workers' Compensation Board of Directors. He lost but he voted "no". In 1995 the Workers' Compensation benefits were reduced to injured workers over 30% and there was a corresponding 18% reduction in premium. If you reduce costs by 30% and reduce income only by 18%, you should make some money.

Mr. Driscoll said the other thing that is amazing to him is that in their annual report, if they hire attorneys, private investigators, or other outside help to fight people from getting benefits, that money is filed against the claim, and against the employer's account. And then, in their annual report, it is shown as benefits paid to injured workers. There is a new bill presented in every session. Every session is started with a few crumbs and when it gets to the Committee, it is all gone for injured workers. **Mr. Driscoll** states if the legislature cuts benefits by 30%, why are premiums only reduced by 18%? Why does the 15% cap need to be removed when there is a lot of money being spent over there which goes against the claim file and is not called an administrative cost. He hopes that for one legislative session there would not be any Workers' Compensation bills and that SB 67 would be killed. One of the things he has been saying which is evident more and more in the people's attitude, is that the newest biggest lie in the world is "I'm from the government, and I'm here to help you".

Russell Hill, Montana Trial Lawyers' Association opposed SB 67.
(EXHIBIT 7)

Don Judge, Montana State AFL, CIO, stated he reluctantly presents himself before the Committee. There are clearly some things for employers which have been an advantage to the State Workers' Compensation Fund. They now have several people issuing insurance policies in the private sector and, of course, the State Fund would like to be able to compete with the private sector and the private sector would like to keep the State Fund around because they really don't want to take those claims and those employers which nobody else wants to handle. He does stand to state that we do have some problems about the way in which this thing has been conducted. Benefits from the annual Department of Labor Work. Comp. reports state in average settlement amounts, which prior to 1987 were ranging somewhere between \$38,000 to \$50,000, depending upon which plan a business was under, are now ranging somewhere less than \$10,000 in all three plans. That's more than a 30% cut. Permanent partial disability benefits have dropped more than 50% in just the last couple of years. That is more than a 30% cut.

Mr. Judge referred to a statement David Owen, Montana State Chamber of Commerce said that he would predict someone would say this because they had said it at a previous hearing, "Well, the truth of the matter is wages are stagnant in the State of Montana, we still rank 47th in the nation in terms of average wage, and all of these cuts in benefits and premium costs, including a 36% cut in premiums over a two-year period, have produced very little, if anything in the area of wage increases". This has not translated itself into increased wages. He remembers candidate, Rick Hill, proudly announcing that there would be a bill to repeal the Workers' Compensation payroll tax, one of the very good sections of this bill. Rick Hill also said we would re-institute some benefits, and here we are today, we have Congressman Rick Hill and we have the State Fund saying we have to take those benefits out, we cannot have those benefits in this legislation. The tax never should have been on workers and very few states have ever enacted a tax on workers for payment of their Workers' Compensation. Mr. Judge quoted Riley Johnson as saying we asked for it, we got it, we asked for it, we got it, we asked for it, we got it. Mr. Judge stated injured workers' didn't ask for it but they got it! And they have been getting it ever since 1987, when this legislature, both Democrat and Republican has said we have to save the State Fund in the State of Montana. By saying that they virtually reached in and reached the guts out of the benefits that injured workers are receiving in the State of Montana.

In terms of rehabilitation, the proposed law would have said that injured workers did not have to suffer a wage loss in order to be eligible for certain forms of rehabilitation benefits. Then someone else said there are not very many people, it is only a \$80,000 to \$90,000 tab. We need to remember that in the last legislative session, we excluded virtually 66% of all claimants from any access to rehabilitation benefits. Because when we said they had to suffer a wage loss, it was an automatic exclusion for about two-thirds of the claims being filed in the State of Montana. Mr. Judge believes there is some potential for workers not suffering wage loss to need rehabilitation benefits in the future. They were hopeful that would be put back in, from their perspective it has to do with people like the kids sitting in the hearing (he is referring the pages), who go to work at a minimum wage job during the school year and get injured, and they have great potential in their lives, they could be doctors or lawyers, or anything they wanted to be. But because they are working at a minimum wage job, in some fast food restaurant or somewhere else, and they are injured and our law states we cannot have rehabilitation benefits unless we suffer a wage loss, because they are at minimum wage and cannot go back into the work force at less than minimum wage, they will never be entitled to rehabilitation benefits if they are injured. The one hope we had in this bill is there might be some justice reinserted into it. Now they see the State Fund asking for more flexibility to exceed the 15% cap so they can be competitive with the private sector. He concurs that they should offer better service to those injured

workers and to those employers out there, but we have had several people before us telling us that the customer of Workers' Compensation is the employer in the State of Montana. **Mr. Judge** said he is hear to tell us there is a different side to that equation, that is those injured workers and those survivors, and those beneficiaries of those injured workers. We need to take care of those people to. The stand opposed, reluctantly to SB 67. They would like to state that it is a good idea and they encourage the Committee to reject the amendments that will strip any benefit improvements out of this bill.

Sue Weingartner, Alliance of the American Insurers was present in opposition of SB 67. (EXHIBIT 8)

Rep. Royal Johnson, HD 10, Billings, stated is has been difficult to understand what has been going on with Workers' Compensation since 1990 and what happened. He likes to take the position that former **Rep. Driscoll** took. He said he would like to get through a session without having this kind of conflict with Workers' Compensation. We could have easily done that if we would have just continued on the course that they had set. He has no criticism about the management of the New Fund nor how they have handled it. But they do not have anything to do, up until this time with the Old Fund. In 1990 they separated the Old Fund and the New Fund asked for \$12 million to make a New Fund work, and you take care of that half billion dollars with a liability sitting out here in the Old Fund.

During special session, not during legislative session, as a candidate, **Rep. Johnson**, came up for that session because he wanted to hear just exactly how to do this. There was an actuary representing the State Fund, another one representing the State of Montana, and neither one of those two people, after about four hours of testimony, could agree on exactly what the problem was. It had not gotten better than that situation until the State Fund dropped it in their lap again in 1993, as a legislature, and said, "What are you going to do with your problem?" Well, we took the painful action that represented **Rep. Driscoll's** statement, and if you did not get any calls on that program, you were the one person in the whole legislature who did not. **Rep. Johnson** never had the phone ring quite as hard. The people wanted to know why you would put a tax on employees and increase the tax on employers to take care of the situation. The reason we did it was in concert with a lot of the people who came up as proponents on this bill today. Because something had to be done. We financed \$142 million worth of long-term bonds, we financed another \$32 million before we hardly got out of town. Those were to take care of the claims the New Fund had against the Old Fund. Once we had done that, we had to have a way to pay those bonds off and the way we decided to pay those off was the tax we have heard about.

Rep. Johnson stated he spoke with **Congressman Hill** a number of times, he talked to a lot people about the fact if we would have

just let it go, the tax would have stayed on just like it had the last time.

{Tape: 2; Side: A; Approx. Time Count: 2:40 p.m.}

In talking to people in the State Fund is was said, you do that, we do that, and we will be right back where we were in 1989 wondering what is going to happen.

This morning's Tribune has an opinion page which talks about the Workers' Compensation. **Rep. Johnson** hopes some have taken time to read it. It is titled "A Leap of Faith", and the last paragraph says, "That is why it is a leap of faith, it intuitively seems wrong but is recommended by the people who have turned the Workers' Compensation system around and they shouldn't be penalized for cutting the premiums". The people who turn the Workers' Compensation around were those people who were working in the New Fund, they had nothing to do with salvaging the Old Fund. If you remember back to 1993, you will find none of those people appeared here as proponents. In her testimony, **Jacqueline Lenmark**, who worked hard in 1993 as he remembers, her desire was to testify when everything was on the level. There isn't anything in this bill, there is not any conversation going around the hall, making this on the level. The Governor asked the State Fund over a year ago, to give us a privatization plan. Where is that plan? He took it around the state and tried to get some action on it and by the mid-year they suddenly learned it was not a privatization plan at all. The board, rightfully so, rejected that so-called privatization plan. So they have had the opportunity to privatize the Fund. They do not want to privatize the Fund, they have the best of all worlds. They have you responsible for the debts, and they have the ability to run it the way they want to. Can you get a better deal than that?

Rep. Johnson referred to a few bullets they used to sell this particular plan. Eliminating the Old Fund tax liability two years early, read the bill and you will find they have an out for that situation. Say \$74 million, they have an out which says if the reserve is below a certain figure, they don't have to do that. That sounds like a statement of fact. It does not sound like if you do this, we can do this and then six months later we go again and if we do this, you can do this.

Rep. Johnson referred to a chart given to him by a member of the State Fund. (This was not handed in as an exhibit) He stated the chart said if what happens the way they say it will, they will save \$74 million. If they go to 6/9/99, they will save \$48 million. If they go to 12/31/99, one year later, they will save \$22 million. That is a deceptive way to sell a program! That is not what this says at all. And the bill will tell you that if you have read the bill.

The reason we are here talking about this is because the State Fund wanted to pay dividends. They do not want to reduce the

taxes on the premium payers until 1998. They could have, at least, gone through until 1998 since that was their program, and said we are not going to do anything like the fees bonds, we are not going to do anything until 1998, we would like to tell the legislature in 1998 that this is a program we think we could consider. The legislature, in the past hundred years, has met the day after the first of the year. Three days was all we had to have and the legislature in 1999 would be here to consider just what we are talking about today. There is no reason to be in this position. The \$20 million we talk about, if you haven't read the last pages about the State Fund in the Volume 2 of your budget books, look on those pages and they will tell you the answer that the State Fund gave when the budget director said to send back the \$20 million that you have had to use since 1989. The letter said "we will do that if you do these conditions, give us a building, do all of those fun things, and then we will pay you back over a four-year period". This bill says they will pay us back over a two-year period, the end of 1998 fiscal year, the end of 1999 fiscal year.

Rep. Johnson is asking this Committee to carefully consider what they are doing here and consider what the options are. Take a look at the other options. You have heard people talk about the benefits and he thinks they are right about a lot of them, and he thought that was exactly what the New Fund was prepared to do, was to increase those benefits to injured workers, and bless their hearts, they deserve it. The \$20 million, if we take it in, when **Rep. Johnson's** HB 150 passes, we can earn about \$107 million for the General Fund, not for the State Fund. For the past seven years they have had the use of that money. If you take their average earnings on \$100 million, you'll find they have a substantial amount of money they have used in the State Fund.

A statement from a letter from a former Chairman of the Board, says to remove any perception, (this is on the synopsis of SB 67), "if the State Fund is a burden to the General Fund, the State Fund shall repay to the General Fund \$10 million in 1998 and \$10 million in 1999". They are going to be a burden until we get the whole \$20 million back. Every year they get the use of that money. The 15% cap which we heard discussed until a year ago, the most money ever paid for administrative expenses was a little over \$15 million, and you can find this out by looking in the annual reports, certainly under \$14 million. At that time there was \$185 million worth of premium going into the State Fund, so there had to be a little extra at that particular point. Even going down to where they are now at \$90 million, take your 15% and multiply it by that and you will get about \$13.5 million dollars.

In addition to that situation, they have taken from the Old Fund, up until the last two years \$3 million per year more for the management of Old Fund claims. That \$3 million shows as an account receivable from the Old Fund to the New Fund of \$2.5 or

\$2.8 million in the 1995 report. That is an account receivable from the Old Fund to the New Fund. If you go back and look at the language in that whole situation and you'll find out what we agreed to is that they would take care of the Old Fund liabilities on a basis of \$3 million per year. The last year **Rep. Johnson** thinks it was \$1.9 million. He urges the Committee not to let this bill pass without hearing some of the other options. We do need to fix it. The bill he suggested will cut taxes immediately, will cut them by half on both employers and employees and self-insured individuals. We will take the \$20 million immediately. The things which are in this bill that are probably good, and ought to be back in by defeating the amendments are the things that do benefit workers. None of the testimony by proponents, all who represented the insurance industry and etc., there is no conversation about the insurer of last resort. That is the reason they would like to keep the State Fund in business, so they do have that situation.

The following is a letter to the President of the Fund from the previous Chairman of the Board, **Rep. Hill**, dated November 12th. "As you know the State Fund can operate with a 15% cap, particularly given the recent interpretation by the legislative counsel, that is flexible interpretation of the limit. However, I also want to object vigorously to the representation your letter to the Governor that the Board supports and approves eliminating the 15% cap. I also take exception to the suggestion that the Board support the plan to merge the Old and New Funds was a vision of privatization plan. As you know, it is my view that privatization plan is actually a non-privatization plan, indeed a substitute for privatization of the State Fund. In my view it be made future privatization of this Fund more difficult and unlikely".

Rep. Johnson stated he rises in strong opposition of this bill, particularly until the other options that are available are heard.

Questions From Committee Members and Responses: None.

Closing by Sponsor:

NOTE: THE FOLLOWING IS A VERBATIM STATEMENT BY SENATOR BENEDICT.

"Mr. Chairman, after that marathon session I would be delighted to close. And I'll try to keep it as brief as possible because I understand we have a floor session to go to as soon as we can. Mr. Chairman, thank you for a very good hearing, Mr. Chairman and Committee members, I think that you are, because of the lack of questions, you're either sitting there in a dazed state because of all the information that you've gotten, or the bill has been pretty well explained and I would hope that it's the latter. I would like to address some comments that have been made about cuts in benefits by both **Jerry Driscoll** and **Don Judge** of the AFL/CIO. And I would submit that previous legislatures under

extreme pressure from organized labor piled benefit on top of benefit until the Work. Comp. system collapsed under the sheer weight of those benefits. Now we have a system that's fair, adequate, and balanced. It provides for injured workers without dragging the system under.

We need a healthy Work. Comp. system in this state, one that benefits employers and employees alike. And holding the line on benefits is what has enabled us to bring this bill forward. As far as **Rep. Royal Johnson's** concerns go, I'm really kind of puzzled as to where some of those come from. And I would maybe submit that it comes down to either a couple of things. It comes down to either sour grapes or it comes down to who do you believe? Do you believe the financial professionals at the State Fund, the people who have transformed that company into one of the brightest success stories in state government and work with the numbers that we're talking about here today, every single day. They do that on a daily basis, that's what they get paid for. Or do you believe someone who may have an ax to grind, who has had a series of Work. Comp. bills that have been killed in previous legislative sessions as being too extreme or unworkable. I think those are the only conclusions that you can draw. Either there are some problems that nobody in this room is aware of, or maybe the information is just not adequate for **Rep. Johnson** to be able to support this bill. But the financial professionals at the State Fund are the people who have brought this bill forward and believe me, I've been through the numbers and it works. With that I would commend this bill to you and ask for favorable action on the bill and the amendments. Thank you."

Amendments to Senate Bill No. 67
First Reading CopyEXHIBIT NO. 2
DATE 1-28-97
BILL NO. SB 67Requested by Senator Benedict
For the Senate Committee on Labor and Employment RelationsPrepared by Eddye McClure
January 25, 1997

1. Title, lines 12 and 13.
Following: "CLAIM" on line 12
Insert: "SIGNED BY THE CLAIMANT OR THE CLAIMANT'S REPRESENTATIVE"
Following: ";" on line 12
Strike: line 13 through "DISABILITY;"
2. Title, line 17.
Strike: "INCREASING ACCESS TO REHABILITATION BENEFITS"
Insert: "PROVIDING FOR FRAUD INVESTIGATION AND PROSECUTION FOR
THE UNINSURED EMPLOYERS' FUND BY THE DEPARTMENT OF JUSTICE;
DEFINING TREATING PHYSICIAN TO INCLUDE THOSE PHYSICIANS
LICENSED IN OTHER STATES; INCLUDING PSYCHOLOGISTS AND
FUNCTIONAL CAPACITY EVALUATIONS AND PROVIDING FOR
EXAMINATIONS BY LICENSED PROVIDERS IN ANOTHER STATE WHEN
EXAMINATIONS ARE REQUESTED BY THE INSURER; ADJUSTING THE
LIFTING REQUIREMENTS FOR LIGHT AND MEDIUM ACTIVITIES FOR
PERMANENT PARTIAL DISABILITY BENEFITS"
3. Title, line 22.
Following: "FUND"
Strike: "AND"
Insert: ","
Following: "JUSTICE"
Insert: " , AND THE DEPARTMENT OF LABOR AND INDUSTRY"
4. Title, line 26.
Following: "39-71-406,"
Insert: "39-71-502, 39-71-605,"
5. Title, line 27.
Strike: "39-71-1006,"
6. Page 4, lines 12 and 16.
Following: "fund"
Insert: "or the department of labor and industry on behalf of the
uninsured employers' fund"
7. Page 4, line 20.
Following: "fund"
Insert: " , the department of labor and industry,".
Strike: "jointly"
8. Page 4, line 21.
Strike: "a"
Insert: "one"

9. Page 4, line 23.

Following: "fund"

Insert: "and the department of labor and industry on behalf of the uninsured employers' fund"

10. Page 5, line 1.

Following: "~~39-71-2503~~"

Insert: "and 39-71-2503"

11. Page 11, lines 29 and 30.

Strike: "or"

Following: "chapter 4" on line 30

Insert: "; or"

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsection (34)(a) through (e) who is licensed or certified in another state

12. Page 12, lines 6 and 7.

Following: first "after"

Strike: "the dispute arises or after"

Following: "denied" on line 7

Strike: ", whichever occurs first"

13. Page 12, line 17.

Insert: "Section 10. Section 39-71-502, MCA, is amended to read:

"39-71-502. **Creation and purpose of uninsured employers' fund.** (1) There is created an uninsured employers' fund. The purpose of the fund is to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2); and

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015.

(2) The department may refer to the workers' compensation fraud office established in 2-15-2015 cases involving:

(a) false or fraudulent claims for benefits; or

(b) criminal violations of 45-7-501."

{ Internal References to 39-71-502:

x39-71-501* 39-71-510 x39-71-517* x39-71-519*
x39-71-534 }

Section 11. Section 39-71-605, MCA, is amended to read:

"39-71-605. **Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost.** (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel of physicians, who that must be provided and paid for by the insurer, and shall likewise submit to examination from time to time by any physician, psychologist, or panel of physicians selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's

(6)

convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel of physicians employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel of physicians making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel of physicians for the examination.

(3) As used in this section, a panel of physicians includes a treating physician as defined in 39-71-116 and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.

~~(3)~~(5) This section does not apply to impairment evaluations provided for in 39-71-711."

{Internal References to 39-71-605:

x39-71-704 x39-71-711}

Renumber: subsequent sections

14. Page 12, line 22.

Following: "compensation"

Insert: "signed by the claimant or the claimant's representative"

15. Page 14, lines 1 through 3.

Strike: "\$2.01 to \$4"

Insert: "more than \$2"

Following: "injury" on line 1

Strike: remainder of line 1 through "40%" on line 3

16. Page 14, line 26.

Strike: "25"

Insert: "20"

lel

17. Page 15, line 25 through page 16, line 25.

Strike: section 13 in its entirety

Renumber: subsequent sections

18. Page 26, line 30.

Strike: "39-71-2504"

Insert: "39-71-2321"

19. Page 29, line 4.

Following: "0.1%"

Insert: "for the full calendar year ending December 31, 1999"

20. Page 30, lines 16 and 17.

Following: "after" on line 16

Strike: "the dispute arises or after"

Following: "denied" on line 17

Strike: ", whichever occurs first"

21. Page 31, line 3.

Following: "**applicability.**"

Insert: "(1) [Section 7(34)(f) and section 11] apply
retroactively, within the meaning of 1-2-109, to claims
filed prior to [the effective date of sections 7 and 11].

(2)"

Following: "[Section"

Strike: "10"

Insert: "12"

22. Page 31, lines 6 and 7.

Following: "through" on line 6

Strike: remainder of line 6 through

"29(1)" on line 7

Insert: "7(1) through (33) and (35), 10, 15, 17, 18, 20 through
27, 29 and 30(1)"

23. Page 31, lines 8 and 9.

Following: "Sections"

Strike: "7,"

Following: "8,"

Strike: "11 through 13, and 27"

Insert: "13, 14, and 28"

Following: "sections" on line 9

Strike: "7"

Following: "8,"

Strike: "11 through 13, and 27"

Insert: "13, 14, and 28"

24. Page 31, line 10.

Strike: "15, and 18"

Insert: "16, and 19"

25. Page 31, line 11.

Strike: "26"

Insert: "27"

62

26. Page 31, line 12.

Strike: "29(2)"

Insert: "30(2)"

27. Page 31, line 13.

Strike: "10, 30, 31, and 33"

Insert: "7(34), 11, 12, 31, 32, 34,

28. Page 31, line 15.

Strike: "14 and 17"

Insert: "15 and 18"

29. Page 31, line 16.

Strike: "26"

Insert: "27"

AMENDMENTS TO SB 67

Several amendments address original technical errors in the bill (Amendments 10, 18, and 19), amend the title to be consistent with the remainder of the amendments (1,2,3,4, and 5) and adjust the effective dates due to the necessity to renumber based on these amendments. (Amendments 21,22,23,24,25, 26, 27,28, and 29)

An amendment deletes the increase in wage loss benefits proposed in 39-71-703 in Section 11 of the bill. (Amendment 15)

An amendment deletes the increased access to vocational rehabilitation benefits proposed in 39-71-1006 in Section 13 of the bill. (Amendment 17)

Amendments to Senate Bill 67 allows the Department of Labor on behalf of the Uninsured Employers Fund to utilize the investigators and prosecutors in the Workers' Compensation Fraud office at the Department of Justice. The Department of Justice will pursue both claim fraud in the Uninsured Employer's Fund and pursue uninsured employers. The cost of investigation and prosecution will be born by the Uninsured Employer's Fund. (Amendments 6,7,8,9, and 13)

The Supreme Court in EBL/Orion v. Blythe held that doctors licensed in an other state could not conduct independent medical examinations.. This amendment allows both non-resident workers and insurers to utilize medical providers in another state. The decision was that the statute was procedural; thus, it could be applied retroactively. (Amendments 11 and 13)

An amendment to 39-71-606 in Section 10 of the bill makes this section consistent with 39-71-601 in that the claim for compensation which triggers the 30 day time period must be signed by "the claimant or the claimant's representative." (Amendment 14)

The amendments address concerns with how to define when a dispute arises for calculating the time period for a statute of limitations in Sections 8 and 27 of the bill. The language is deleted in the proposed amendment and would allow the two year time period to start only when benefits are denied. (Amendments 12 and 20)

Amendment to Section 11 of the bill revises the lifting requirements in permanent partial disability from 25 to 20 pounds so that it is consistent with the Dictionary of Occupational Titles. This will allow the Workers' Compensation requirements to better match standards in the industry when searching for occupations for workers. (Amendment 16)

Senate Bill 67 - Testimony of Carl Swanson, President/CEO Montana State Fund

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 1-28-97
BILL NO. SB67

The State Fund supports Senate Bill 67. Senate Bill 67:

◆ Eliminates the Old Fund Liability Tax and Merges the Old Fund and the New Fund

Workers' compensation insurers made money in the last six years. Private insurers saw a 30% return on equity and State Fund's surplus grew to \$231 million by the end of fiscal year 1996. The difference between State Fund and private carriers is: State Fund put its profits to work for Montana. This includes using \$109 million to pay off Old Fund bond debt.

- The single most important factor in allowing the Old Fund Liability Tax (OFLT) to be terminated sooner than expected was State Fund's declaration of a dividend to the Old Fund.
- If we can stay the course for only two more years, taking into consideration the amounts State Fund can contribute from its surplus (\$70 million), all OFLT collections can be terminated by the end of 1998. The bottom line is:
 - Montana taxpayers will pay significantly less,
 - State Fund stays financially stable, and
 - Premiums charged to our customers will not increase.

By merging the two funds and eliminating the OFLT, State Fund's Board of Directors can choose to provide dividends to deserving customers when the money is available to do so. This is the same function private insurers can perform for their customers. Currently, our only option is to give the money over to the Old Fund. Since that is our only option, we should assume that Old Fund liability and manage that liability until fully paid.

◆ Addresses Administrative Expense Limit

Included in this bill are changes to the definition of State Fund's administrative expense limit, which is very important to the future success of the fund. That limit is 15% of the prior year's premium. The bill does not propose to increase expenses. Instead, we are proposing to re-define the costs included in the 15% limit. If we do not adjust the definition of the administrative expense limit, we will not be able to provide the level of services we currently provide to our customers starting with the next fiscal year.

The premium rate reductions over the last two fiscal years (FY 96 and FY 97) decreased annual premium 35%. Private insurers writing business in Montana also reduced premium at State Fund (18% reduction from 1994 premiums of \$181 million). However, work loads at State Fund have not decreased proportionately with the decrease in premium. We insure approximately the same number of employers now as in the past - 24,990 accounts as of December 1996. The business State Fund lost was primarily a small number of policyholders with large premiums.

Claim adjusters now investigate the prior medical history on claimants, aggressively pursue early return-to-work options, spend more time on initial investigations, and document files with summary reports and action plans to better manage our claims.

The following table is an example of the impact of a rate decrease with the same level of business and expenses.

<u>Example of Impact of Rate Decreases on Expenses</u>		
(Assumes \$100 million in premium)		
(Assumes \$10 million in expenses)		
(Assumes 35% Premium Rate Decrease in Year 2)		
	Year 1	Year 2
Premium	\$100,000,000	\$65,000,000
Administrative Expenses	\$10,000,000	\$10,000,000
Administrative Expenses as a Percent of Premium	10.00%	15.38%

No state General Fund money is used in the operation of State Fund. Since all administrative costs are recovered in the premiums charged to employers, the current limit is a restriction on the efficient operation of the fund. The current limit will result in reduced safety and claim management services to employers. State funds across the country are experiencing trends similar to the Montana State Fund. Benefit reforms resulted in premium rate decreases and the return of private insurers into their markets. As a result, operating expense ratios increased over time, because a smaller base exists over which to spread the administrative expenses. The following is a partial list of the 1995 operating expense ratios as a percent of premium at other state funds.

STATE	OPERATING EXPENSE RATIO - 1995 (includes loss adjustment expenses)
Arizona	19.6%
California	40.8%
Colorado	22.6%
Idaho	38.9% (adjusted for dividends)
Louisiana	27.4%
Maine	25.6%
Minnesota	32.2%
Oregon	47.2%
Utah	22.0%
Montana (FY 1995)	7.9% (includes Loss Adjustment Expenses)

(The State Fund administrative expense ratio for fiscal year 1996 was 10.9%. The estimated fiscal year 1997 administrative expense ratio will be 18.1%.)

The following legislative changes redefine what is included in calculating the 15% administrative expense limit.

1. Include investment income with premium in the calculation

By law, State Fund is required to consider investment yield when determining premium levels. Therefore, including investment income in the administrative limit calculation is appropriate.

2. Remove loss adjustment expenses from the determination of the administrative expense limit

State Fund reserve liability includes a provision for loss adjustment expenses to reflect the expense of managing the remaining claim liability. As claim and loss adjustment expenses are paid each year, the reserve liability is reduced. Loss adjustment expenses include all expenses to adjust and record claims. They also are a function of losses incurred. Claim adjustment expenses continue for the life of the claim.

3. Exclude the cost of licensed insurance producer commissions

Since this cost has not been included in the determination of the expense limit in current law, it should not be included in the future.

4. Adjust for full accrual accounting to Generally Accepted Accounting Principles

Essentially, capitalizing equipment as an asset and recording depreciation expense for the life of the asset. State Fund is currently excluding this item from calculation of the 15% expense limitation.

5. Exclude dividends

Dividends are not an operating expense and therefore should not be included in the calculation.

664

◆ **Addresses Licensed Insurance Producers**

SB 67 clarifies that State Fund Board of Directors can enter into contracts with insurance agents. These services are normally provided by state funds. This bill will improve customer service to our customers, because agents can serve as a liaison between State Fund and its customers. State Fund will work with the private insurance agent community to provide this important service to their local customers. The use of existing experienced agents in the private sector instead of providing this function in-house will control FTE numbers at State Fund.

Other Changes

◆ **Increases Size of Board of Directors** (Section 1)

Expands the board from five to seven members to obtain additional business expertise on the board. One member may be a licensed insurance producer.

◆ **Provides for Other States Coverage** (Section 14)

The bill allows State Fund, upon approval of the board, to enter into agreements with licensed workers' compensation insurers. This provides workers' compensation coverage in other states for Montana-domiciled employers insured with State Fund. This provision allows State Fund to offer additional services to its insureds with multistate operations by reducing the need for those employers to locate and obtain out-of-state insurance. This service is standard in the industry and is used by other state funds.

◆ **Addresses Fraud Office Budget** (Section 2 and 23)

Currently, the budget for the fraud office in the Department of Justice is approved by the Legislature in the appropriations process. The Board of Directors of State Fund approves State Fund's budget, which includes funding for the Department of Justice fraud office. This provision creates responsibility for State Fund and the Department of Justice to prepare a joint biennial budget to the Legislature based on State Funds' needs for investigation and prosecution of fraud. In addition, this provision modifies mandated staffing levels and allows staffing based on need. It also requires a cooperative effort to staff and fund the fraud effort, since current law does not clearly address responsibility and criteria for appropriate budget levels.

Other Features

◆ **Defines "Dependent" of deceased worker** (Section 7)

Current law does not define the extent of dependency for purposes of workers' compensation death benefits. The bill provides that a "dependent" is determined by reference to IRS Code (eg. dependent receives 50% or more support.) This puts into law the current State Fund practice.

◆ **Provides for Statute of Limitations to bring disputes to hearing** (Section 8 and 27)

Current law does not require workers' compensation disputes to be brought to hearing within any time period. Consequently, evidence can become stale. The bill provides workers' compensation disputes must be brought for hearing within two years of the dispute or the denial of benefits, whichever occurs first. This allows closure to issues.

◆ **Proposes the failure to accept or deny a claim within 30 days results in a penalty rather than acceptance of the claim** (Section 10 and 31)

The recent Supreme Court case of Haag v. Montana Schools Group, (1995) held a claim is automatically accepted if an insurer fails to deny the claim or place it under a reservation of rights (§608) within 30 days of receipt; even if the claim is fraudulent or other possible defenses exist. The bill provides a claim is not automatically accepted because an insurer fails to deny or reserve rights on a claim within 30 days. It brings the law into conformity with prior interpretation under Solheim case. It also provides for a penalty if an insurer wrongfully delays action on a claim. It applies retroactively to 1973, because it is a procedural law or law that merely alters legal remedy.

◆ **Termination of Temporary Partial Benefits for Refusal to Accept Modified Position when the position plus benefits pays the same or higher wage (Section 12)**

The bill provides for termination of temporary partial or temporary total disability benefits if the worker refuses available modified or alternative employment with the same employer.

Current law does not provide for termination of temporary total or temporary partial disability benefits when:

- An injured worker is released by a treating physician to modified or alternative employment with the same employer, and
- The injured worker refuses to accept the modified or alternative position.

The State Fund Board of Directors is in support of this bill and urges the committee to vote a Do Pass for SB 67.

Senate Bill 67 *Sponsored by Senator Benedict at the request of Governor Radcliff*

✓ Merges the Old Fund with the New Fund

Definitions:

Old Fund - Established in 1990 by a Special Legislative Session. Pays for workers' compensation claims prior to July 1, 1990. All Montana employers, employees and self-employed pay an Old Fund Liability Tax (OFLT) to pay down Old Fund debt.

New Fund - Established in 1990 by a Special Legislative Session. Pays for workers' compensation claims after July 1, 1990. Money to operate New Fund [also called the Montana State Fund or State Fund] comes solely from workers' compensation insurance premiums and not from the General Fund.

All Montana employers and employees will benefit by merging the Old Fund and the New Fund. The merger will provide taxpayer relief, remove the burden of the Old Fund, and allow the Montana State Fund to pay dividends to deserving policyholders.

The merger will:

1. Eliminate the OFLT two years early, saving taxpayers approximately \$74 million;
2. Use \$94 million from the New Fund to pay Old Fund claims, and eliminate Old Fund liability [General Fund appropriation included in \$94 million];
3. Allow dividends declared by the State Fund Board of Directors to be paid to deserving policyholders when funds are available.

✓ Repays \$20 million to General Fund

State Fund will repay \$10 million to the General Fund in FY98, and \$10 million in FY99. State Fund supports repayment of the \$20 million appropriated to the Old Fund in 1989, because it removes any perception State Fund is a burden to the General Fund.

State Fund Operational Amendments

✓ Amends State Fund 15% limit on operational expenses

State Fund's operational expense limit must be changed so the agency can provide necessary services to policyholders and remain financially stable. Rate reductions and the return of private insurers to Montana reduced premiums paid to the State Fund to about \$86 million. However, State Fund employee workloads for 25,000 insureds remain about the same. Without a change, the shortcomings that existed when State Fund operated in the red will return. The shortcomings include: lack of proactive claim management, unanswered telephone calls, and a backlog of mail.

Other Operational Changes

- ✓ **Insurance Agents:** Allows State Fund customers the option to be represented by licensed insurance agents.
- ✓ **Size of Board of Directors:** Increases from five to seven members, to add additional business expertise.
- ✓ **Other States Coverage:** Provides additional service to policyholders with multistate operations.
- ✓ **Fraud Office Budget:** State Fund and Department of Justice will prepare a joint biennial budget.

Other Features of SB 67

- ✓ **Increases permanent partial disability wage loss benefits**
- ✓ **Provides greater access to vocational rehabilitation**
- ✓ **Defines "dependent" of deceased worker**
- ✓ **Provides for statute of limitations to bring workers' compensation disputes to hearing**
- ✓ **Proposes the failure to accept or deny a claim within 30 days results in a penalty rather than acceptance of a claim for State Fund**
- ✓ **Terminates temporary partial benefits for refusal to accept modified work assignment**

Independent Insurance Agents of Montana Inc.



Montana Insurance Education Foundation Inc.
Public Risk Insurance Management Inc.



SB-67

Before the Senate Labor and Employment Relations Committee
January 28, 1996

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 1-28-97
BILL NO. SB 67

Written comments respectfully submitted by:
Roger McGlenn, Executive Director, Independent Insurance Agents
Association of Montana phone: (406) 442-9555

The Independent Insurance Agents' Association of Montana rises in support of Senate Bill 67.

Because of all the testimony you are receiving on this bill, I will not comment on all the portions of this bill. I will limit my comments to those sections involving insurance producers, (agents). Although our association did not urge or encourage the State Compensation Insurance Fund to consider using Montana insurance agents to sell and service workers' compensation coverages provided by the State Fund, we appreciate the State Fund forming a task force that began meeting back in September of 1996, to review feasibility and benefits of possibly using Montana agents. During these task force meetings, our association came to the belief that agents can bring a value added to Montana employers, their employees and the State Compensation Insurance Fund. The benefits and services that agents can provide are well worth the compensation agents will receive as outlined in the bill's fiscal note.

Some of the benefits we believe will be provided are as follows:

- Improved service and provide a local service contact
- Local source of information and response to rate, coverage and procedural questions
- Loss control and coverage coordination to ensure as complete protection as possible and prevent gaps or overlapping coverages
- Reduce operating cost to the State Fund by reducing questions and concerns directed to State Fund staff
- There are many more examples. We believe this relationship will benefit the State Fund, employers, employees and Montana insurance agents.

We also believe that the operation of the State Fund will be improved by the possibility of including a Montana insurance producer on the board of directors. This will benefit all concerned by providing increase insurance knowledge and in-field technical experience on the Board of Directors.

We ask for a do-pass recommendation for Senate Bill 67

Directors:

Wade Dahood
Director Emeritus
Elizabeth A. Best
L. Randall Bishop
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Victor R. Halverson, Jr.
Gene R. Jarussi
Micheal F. Lamb
Peter M. Meloy
James P. Molloy
John M. Morrison
Gregory S. Munro
David R. Paoli

Montana Trial Lawyers ASSOCIATION

Russell B. Hill, Executive Director
32 S. Ewing, Suite 312
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Officers:

Gene R. Jarussi
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Patricia O. Cotter
Secretary-Treasurer
William A. Rossbach
Governor
David R. Paoli
Governor

January 28, 1997

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7
DATE 1-28-97
BILL NO. SB67

Sen. Tom Keating, Chair
Senate Labor Committee
Room 413/415, Capitol Station
Helena, MT 59620

RE: SB 67

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's support for Sections 11 and 13 of Senate Bill 67 and our opposition to several other provisions of the bill.

Benefit enhancements. In a bill which contemplates paying more than \$1 million in new insurance-agent commissions in FY 1999 and authorizing the State Fund to make more than \$35 million in bookkeeping "adjustments" that year to evade current limits on administrative expenses, MTLA believes that injured workers deserve at least Section 11 (\$62,102 in new rehabilitation benefits) and Section 13 (\$791,793 in new permanent partial disability benefits) of the bill.

Temporary partial disability. Section 12 of SB 67, apparently in an effort to reduce temporary partial disability benefits for injured workers even more, would create legal and logical chaos. Currently, an insurer's liability for temporary partial disability must be the difference between an injured worker's time-of-injury wage and the actual wages he receives during his period of disability. For instance, a worker earning \$10 an hour at the time of injury and \$7 an hour at a modified or alternative position is entitled to \$3 per hour in temporary partial disability benefits.

But according to subsection (4)(b) of Section 12, that same worker becomes ineligible for temporary partial disability benefits if his wages in the modified or alternative position (\$7 an hour) plus his temporary partial disability benefits (\$3 an

hour) result--as they almost always will--in "an equivalent" wage to his time-of-injury wage.

MTLA suggests that subsection (4)(b) of Section 12 be amended as follows:

"(b) the wages payable in the modified or alternative position, when combined with the temporary partial disability benefits, would result in an ~~equivalent or~~ higher wage than the worker received at the time of injury; and"

Insurer acceptance or denial of claim. Section 10 of SB 67 need not give insurance companies carte blanche to stonewall injured workers. The first sentence of subsection (5) adequately accomplishes the intent of this section to address the Montana Supreme Court's holding that failure to accept or deny a claim within 30 days constitutes denial.

But the second sentence of this subsection does much more: it encourages insurance companies to delay their investigations and decisions regarding liability for work-related injuries with little fear of penalties. Since 39-71-608 only allows (but does not require) an insurer to pay conditional benefits without admitting liability, and since the only disincentive to delay under 39-71-2907 is a 20 percent penalty on the benefits "unreasonably" withheld, an insurance company which denies disability benefits to an injured worker for three months would be subject to a maximum penalty of about \$912 (20 percent of \$380/week). Meanwhile, such a delay will cause enormous financial hardship, even bankruptcy, for the injured worker.

MTLA suggests that this second sentence of subsection (5) be amended to provide that the insurer can extend the 30-day time period without accepting or denying the claim simply by beginning to pay conditional benefits:

"However, an insurer who fails to accept or deny a claim within 30 days must begin paying benefits from the date of claim until it accepts or denies the claim, and if it fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 and 39-71-611 if a claim is determined to be compensable by the workers' compensation court."

This amendment would also subject an unreasonable delay to more substantial disincentives, including attorney fees and costs.

Finally, MTLA opposes Section 31 of SB 67 which would, under the rubric of procedural amendments, unconstitutionally apply the substantive amendments regarding acceptance/denial retroactively to March 27, 1973.

Statute of limitations. Although the generally accepted statute of limitations in Montana law for personal injuries is three years, Sections 8 and 27 of the bill would require injured workers to petition for a hearing within two years after a dispute arises or benefits are denied, whichever occurs first. Injured workers are rarely sophisticated in the legal hurdles created by Montana's work comp system and this abbreviated statute of limitations will deprive individuals of essential work-comp benefits to which they would otherwise be entitled.

In addition, MTLA suggests deletion of the phrase "after the dispute arises or"

(and the related phrase "whichever occurs first") from the amendment to Sections 8 and 27 in order to avoid unnecessary litigation.

In addition, MTLA opposes any effort by insurance companies to add an absolute statute of repose to these sections of SB 67.

State Fund administrative expenses. MTLA sees little advantage and much disadvantage to injured workers in relaxing current statutory limits on administrative expenses for a State Fund strong enough to lead the benefit-cutting charge for employers and other insurers, yet not strong enough to defend its own recommendations in SB 67 for common-sense benefit enhancements. Especially when other bills before the 1997 Legislature would eliminate the Old Fund Liability Tax much more cleanly and without so many "devil's bargains," Montana employees have little reason to support Section 23 of SB 67.

The State Fund's explanation for needing to exceed current statutory controls on administrative expenses is unconvincing and internally inconsistent:

First the State Fund grossly exaggerates the significance of its own management when it warns that, without Section 23, the problems that plagued Montana's work-comp system a decade ago will return. Similarly gross exaggerations of the unfunded liability in Montana's "Old Fund" (later acknowledged) created a crisis atmosphere that resulted in drastic benefit reductions for Montana employees. Those reductions, along with the "paper profits" that resulted from revising earlier inflated projections, contributed far more to the State Fund's current financial stability than the State Fund's own management.

Second, the State Fund makes two conflicting arguments to justify its own escalating administrative expenses and the "need" to magically redefine a 17.87% administrative-expense ratio in FY 1999 as a 10.66% ratio. To the extent that it blames recent explosions of administrative expenses on one-time capital acquisitions, the State Fund must admit that its current administrative-expense ratios should correspondingly decline in the future. But to the extent that it blames projected increases in its administrative expenses on premium reductions, the State Fund signals its desire to continue favoring employers in the future-- rather than restoring employee benefits, which would conversely lower the State Fund's administrative-expense ratio. (See the State Fund's own "Impact of Changes to Administrative Ratio" handout prepared in support of SB 67.)

Consider:

• The State Fund's "unallocated claim adjustment expenses" (again, not ratios related to premiums) have almost doubled in just three years, at the same time its business has shrunk:

<u>Fiscal Year</u>	<u>Fiscal Year Paid Loss</u>	<u>Paid ULAE</u>	<u>ULAE Percent</u>
7/1/94-95	\$100,008,060	\$6,312,225	6.3%
7/1/95-96	\$92,774,861	\$9,578,583	10.3%

7/1/96-97	\$93,350,000	\$9,728,339	10.4%
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● The State Fund's "allocated claims adjustment expenses" (not ratios related to premiums) have more than doubled in just three years, at the same time its business has shrunk:

<u>Fiscal Year</u>	<u>Fiscal Year Paid Loss</u>	<u>Paid ALAE</u>	<u>ALAE Percent</u>
7/1/93-94	\$103,766,420	\$578,000	0.6%
7/1/94-95	\$100,008,060	\$590,000	0.6%
7/1/95-96	\$92,774,861	\$932,034	1.0%
7/1/96-97	\$93,350,000	\$1,419,050	1.5%

● The State Fund's overhead expenses (not ratios) have increased by more than half in just four years, at the same time its business has shrunk:

<u>Fiscal Year</u>	<u>Overhead Expenses</u>
7/1/93-94	\$5,288,528
7/1/94-95	\$7,689,893
7/1/95-96	\$6,007,710
7/1/96-97	\$8,251,450

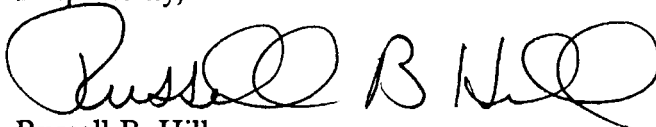
● The State Fund's loss adjustment expenses (not ratios) increased a whopping 80 percent last year to \$713,000, compared to \$396,000 in the previous year. Likewise, operating expenses (again, not ratios) increased 25 percent last year to \$12.5 million, compared to \$10 million the previous year. Meanwhile, "New Fund" premiums were declining 25 percent and paid benefits were declining 8 percent.

● Operating profits and total return on net worth for insurers writing workers compensation coverage in Montana have far exceeded the national average since 1991:

	<u>Operating Profits</u>		<u>Total Return on Net Worth</u>	
	<u>Montana</u>	<u>National Avg.</u>	<u>Montana</u>	<u>National Avg.</u>
1994:	22.5%	13.1%	30.5%	14.4%
1993:	16.0%	9.6%	26.7%	13.4%
1992:	23.2%	3.2%	34.7%	8.6%
1991:	36.1%	-0.3%	37.5%	4.9%

Again, thank you for this opportunity to express MTLA's opinions on SB 67. Please contact me if I can provide additional information or assistance.

Respectfully,



Russell B. Hill
Executive Director

SENATE LABOR AND EMPLOYMENT
COMMITTEE
DATE 1-28-97
BILL NO. SB 67

STATEMENT

of the



On Senate Bill 67

Before The

State of Montana

Senate Labor and Employment Relations Committee

January 28, 1997

Statement Presented By

Sue Weingartner, Local Counsel for

Alliance of American Insurers

**Alliance of American Insurers - Testimony
Montana S.B. 67**

My name is Sue Weingartner, and I am here today on behalf of the Alliance of American Insurers to provide its views on Senate Bill 67. The Alliance of American Insurers is a national trade association of over 250 property/casualty insurers. Alliance members write about 27 percent of the workers compensation insurance written by private insurers in Montana.

I would like to thank the committee and Senator Benedict for the opportunity to discuss Alliance concerns with Senate Bill 67.

1. **The Alliance urges that Senate Bill 67 be amended to provide for an independent audit of the financial condition of the combined funds prior to repayment of the \$20 million and the repeal of the Old Fund taxes by one of the national actuarial consulting firms, other than the firm that served as a consultant to the State Fund on its privatization proposal.** The Alliance recognizes that there are some contingency provisions in Senate Bill 67. However, those provisions are sensitive to the accuracy of estimates of claim reserve liabilities and surplus. **If reserve estimates turn out to be low particularly given that the amount the reserves are discounted exceeds the total fund surplus, the Fund could be in serious danger of insolvency.** Given the thin margins on which the Fund will be operating because of the assumption of Old Fund liabilities, the present discount rate being used of 5.75 percent seems less than prudent. An independent audit which uses its own evaluation of Fund liabilities and may propose different assumptions than those used by the Fund would help to assure that history does not repeat itself. Given the potential benefit to the state from this legislation, the Alliance recommends that the audit be performed by a truly disinterested party.
2. The Alliance also recommends an amendment to delete **Subsection 1(i) of Section 14** which allows the State Fund to enter into fronting arrangements with private insurers to provide workers compensation insurance coverage in other states to Montana-domiciled employers. **The State Fund was established to assure Montana employers coverage for their liabilities under the Montana workers compensation statute, not their liabilities under the laws of other states such as California or New York.** There is no evidence that employers with workers compensation liabilities outside Montana cannot obtain coverage from private insurers or other State Funds in those states. At a time when the financial condition of the Fund is likely to be

stretched to the limit, it would not seem prudent to put at risk small employers in Montana because of State Fund liabilities growing out of fronting arrangements in liberal states with high benefit levels. It wouldn't take many large dollar claims to cause a problem. Given the State Fund's dominance in the market, it would be difficult for the State Fund to argue that it needed this change in order to successfully compete.

3. **Section 23** ought to be amended to provide some state oversight mechanism to assure State Fund policyholders that efficiencies are being maximized since, unlike private insurers, the State Fund is not subject to insurance department oversight. This section creates a number of exceptions to what is included under the 15 percent cap. The Legislature needs to be sure it knows which expenditures are subject to the cap and which are not because the 15 percent figure will no longer have meaning. Private insurers can empathize with the State Fund's problems when costs generated by existing claims remain constant but premium is rapidly declining. We too face those problems and have to make cuts to control expenses that can be painful. More than fat is being cut.

However, it is puzzling why some of the items are excluded from the cap, such as payments to producers and dividends, because those costs are not fixed. Private insurers have had to face the unpopular prospect of reviewing their dividend and commission structures. Why shouldn't the Fund?

4. **The Alliance also supports employer suggestions that the benefit provisions of Senate Bill 67 be dropped.**

Thank you for the opportunity to present the views of the Alliance of American Insurers.

**MONTANA SENATE
1997 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE**

DATE 1-28-97

[illegible]

78

DATE 1-28-97

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 67 & SB 41

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Russ Ritter	Washington Corp	67	✓	
Jerry Dusioff	mt Building Trades	67		✓
Riley Johnson	NFIB	67	✓	
David Owen	mt chamber	67	✓	
Mick Robinson	Governor's Office	67	✓	
Nancy Butler	State Fund	67	✓	
Guinevere Denmark	Am. Ins. Assn	67	✓	
Guinevere Denmark	Am. Ins. Assn	41	✓	
Royal Johnson				✓
Michael Gray-Taylor	Prof. Asst. of MT PIA	67	✓	
Leo S. Ward	MSG EA	67	✓	
Bent Hardahl	MT Motor Carriers	67	✓	
Dan Hutchings	MBIA	67	✓	
Bill Owen	MBIA	67	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-28-97

SENATE COMMITTEE ON Labor & Employment Relations
BILLS BEING HEARD TODAY: SB 67 & SB 41

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Aidan Myhre	Rehab. Assn.	67	✓	
Bill Crivello	Crawford & Co	67	✓	
CHUCK HUNTER	DOLI	67, 41	✓	
Roger McGlewn	IIAM	67	✓	
John Rusteberg	Self	67	✓	
Ray Barnicoat	MACo	67	✓	
CARL SWANSON	STATE FUND	67	✓	
Don Allen	CWEST	67	✓	
George Wood	Att. Self Insured Assoc	67-41	✓	
Alle Kumpfer	Alliance Am Fam	67		✓
Mike Bales	Dept of Justice			
Bob Worthington	AMIA	67	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 1-28-97

SENATE COMMITTEE ON Labor & Employment Relations

BILLS BEING HEARD TODAY: SB 67 & SB 41

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Charles R. Brooks	Rep. Hilling Channing	SB 67	☒	☐
Russell B Hill	MT Trial Lawyers	SB 67	☐	☒
Don Dodge	MT STATE AFL-CIO	SD 67	☐	☒

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN THOMAS F. KEATING**, on February 15, 1997, at 11:48 a.m., in 413/415

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Benedict (R)
Sen. C.A. Casey Emerson (R)
Sen. Dale Mahlum (R)
Sen. Debbie Bowman Shea (D)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddy McClure, Legislative Services Division
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 304, SB 307; 2-11-97
Executive Action: SB 67, DO PASS AS AMENDED
SB 302, TABLED
SB 304, DO PASS

HEARING ON SB 304

Sponsor: SENATOR MACK COLE, SD 4, Hysham

Proponents: Jim Almond, J.B. Grierson Company
John Bloomquist, Montana Stockgrowers' Association
Candace Torgerson, Women In Farm Economics
Nancy Butler, State Fund
Jacqueline Lenmark, American Insurance Association

Opponents: None.

SB 45 takes care of the upward migration of liability related to this administrative situation created in the statutes. **REP. MOLNAR'S** bill eliminates exactly the same sections that we eliminate in SB 45. The difference in **REP. MOLNAR'S** bill versus SB 45. He has a provision in there which states if a person claims he is an independent contractor, that is what he is regardless of what happens. There is no documentation of that. You could have a situation where there is a handshake or verbal agreement. That does not protect us, it puts us right back to where we have always been and there is an accident and the independent contractor claims he was never an independent contractor.

They are dealing with two sets of liability. Administrative liability is currently in the statute and a number of bills are taking care of that, then we are dealing with this tort liability question. The only thing that we can do to protect ourselves in that regard is either to require that everybody has insurance or get some kind of formal public documentation which says that person was an independent contractor.

Closing by Sponsor:

SEN. CRISMORE said he appreciates all the help with this bill. He knows it is late for this committee and that it is a big challenge. Whatever comes out of this committee is going to be very important to everybody in the State of Montana. He used to tell his crew that the reason you are here is because you are the best.

{Tape: 2; Side: A; Approx. Time Count: 1:37 p.m.; Comments: The Committee took a 10 minute break.}

EXECUTIVE ACTION ON SB 67

CHAIRMAN KEATING asked the Committee to refer to the Grey Bill (EXHIBIT 3) in review of SB 67. SB 67 and the amendments to it are presented in the Grey Bill.

Amendments: SB006701.AEM (EXHIBIT 4), Revised (EXHIBIT 5).

Motion: **SEN. BENEDICT** moved SB 67 do-pass with amendments.

Discussion: **SEN. BENEDICT** explained the amendments in that since the bill was first introduced, there have been some ongoing discussions with different people who represent different interests and also some members of the House who had some concerns with the bill. They came up with some solutions that satisfy a lot of those concerns.

He doesn't think anybody is going to be completely satisfied. They are not planning to merge the Old and New Fund yet. **SEN.**

BENEDICT stated the Old and New Fund will be merged when the Old Fund is fully funded plus 10%. He said we are going to transfer \$63.8 Million to the Old Fund by 6/30/98. We are going to transfer \$20 Million to the General Fund, \$10 Million in 1998, and \$10 Million in 1999.

The Old Fund Liability Tax (OFLT) will be eliminated when the State Fund's independent actuary projects Old Fund unpaid liabilities are adequately funded with the combination of the OFLT and State Fund contribution of the \$63.8 Million. In other words, we are not going to put a stake certain in the statute that the Old Fund tax is going to come off. We are going to say it is going to come off when it is fully funded plus 10% to give us a little assurance. Those are probably the biggest changes. There are some changes to the cap, the administrative expense limit will be 15% of the prior year's premium revenue and up to one-half of the prior year's investment income as approved by the State Fund Board. Each year the State Fund management will present the board-approved budget to the Legislative Finance Committee for review.

SEN. EMERSON asked **SEN. BENEDICT** if the 10% was of the liability which was covered by the Old Fund.

SEN. BENEDICT responded that is the Old Fund liability. The actuarial estimate of the Old Fund Liability which could run for 25 years, because those are fixed claims, those are indemnity claims that are fixed claims. Once we have the money in the bank to take care of the Old Fund Liability to where the actuary says it is the very end, plus 10%, then we can go ahead and merge the funds and take off the payroll tax. This is a compromise, **SEN. BENEDICT** believes they have come up with a solution that everyone can live with.

CHAIRMAN KEATING referred to first section regarding the transfer of \$63.8 Million to the Old Fund account. He asked what that transfer does to the Old Fund.

SEN. BENEDICT responded the balance in the Old Fund is around \$216 Million at this point. That would reduce it by \$63.8 Million, but he did not have exact numbers available.

SEN. BENEDICT asked **Carl Swanson** if he gave \$63.8 Million to the Old Fund one year from this summer, what would the balance of the Old Fund liability be?

Mr. Swanson responded July 1, 1998 the Old Fund was actually a deficit and comes down to \$83.3 Million.

CHAIRMAN KEATING asked if that is where the deficit will be on 6-30-98?

Mr. Swanson responded that is correct.

CHAIRMAN KEATING asked if the \$63.8 Million is transferred in if the total would be \$83.3 Million.

Mr. Swanson answered that with the payroll tax we are planning to fund it plus 10% by July 1, 1999. We would have the Old Fund fully funded so the deficit would be eliminated plus another 10%.

CHAIRMAN KEATING asked **Mr. Swanson** why the State Fund in putting in \$63.8 Million on that particular date and what is magic about \$63.8 Million?

Mr. Swanson said in the discussion one of the things we are looking at in the bill is to keep the Old Fund and the New Fund separate. That addresses some of the concerns being expressed. Also, to create some cushion which is the 10%. The Old Fund Liability Tax needs to come down to six-month increments. Originally they were planning to end the tax on December 1998, but to build a 10% cushion in the Old Fund requires that tax to be extended through June, 1998. So with the revenue from the Old Fund Liability Tax, it will pay \$63.8 Million of projections to fund the Old Fund plus 10% by July, 1999.

SEN. BENEDICT asked if **Mark Barry** would explain to the committee where the Old Fund is right now and where is it going to be on June 30, 1998 and where will it be after the \$63.8 Million is transferred.

Mr. Barry responded they are projecting at the end of this fiscal year the State Fund will be at a deficit of \$198.6 Million.

SEN. BENEDICT asked what the figure is right now.

Mr. Barry responded the unpaid liability will be at \$216 Million. They anticipate having about \$20 Million in assets. So that is where they come up with a negative fund balance in the Old Fund of \$198.6 Million. Operating results in the Old Fund are expected to \$51.5 Million in 1998. That includes \$49.9 Million in Old Fund Liability Tax plus about \$4.6 Million in investment income off the \$63.8 Million that the New Fund will contribute, plus the assets in the Old Fund. He estimated they will have a surplus in the Old Fund on July 1, 1998 of \$83.3 Million. That amount is on an undiscounted basis. Their proposal is to fully fund it at a present value basis to take into account investment earnings on the amounts they will put up as assets. In 1999, the operating results in the Old Fund will be an estimated \$97.3 Million.

SEN. THOMAS asked if \$83 Million is present value.

Mark Barry responded that is not present value. In fiscal year 1999, their operating results will be \$97.3 Million. The Old Fund Liability Tax will be \$51.3 Million, investment income in the Old Fund will be \$9.9 Million. There will be an adjustment to the same liability to bring it to present value of

approximately \$38 Million. That is where the \$97 Million comes from, that is the adjustment. That will bring to a surplus estimated at July 1, 1999 of \$14 Million. The present value unclaimed liability in the Old Fund at June 30, 1999 is estimated to be \$130 Million. 10% of that is \$13 Million, so they are estimating a bit of a cushion there. Again, these are estimates based on their actuary's current estimates of ultimate projections in the Old Fund and the New Fund. They are subject to change based upon what the actuary provides. (EXHIBIT 6)

SEN. KEATING asked **SEN. BENEDICT** why transfer \$20 Million into the General Fund?

SEN. BENEDICT responded the General Fund advanced the Workers' Compensation system money in 1990 to cover the claims and expenses in 1990. They are making a good faith effort to pay that back, although it was not written as a contracted loan.

CHAIRMAN KEATING asked if we use the \$20 Million against the Old Fund Liability, then we can get rid of the payroll tax six months faster, can we not?

SEN. MAHLUM said in their October or November meeting, the Board of Directors for the Fund voted unanimously to do the right thing for our state by giving the money back which was given them to get started with the New Fund.

SEN. SHEA asked about paying some of that excess money back to the workers who contributed it? On page 3, lines 6 and 7, the State Fund transferring \$63.8 Million to the Old Fund account to pay Old Fund claims and then allowing direct payment of dividends to policyholders. Some of the excess dollars from that, which workers have contributed towards this, doesn't seem like they are accounting for this and taking it into consideration at all.

SEN. BENEDICT said that is a philosophical question and you would get a lot of different people with a lot of different ideas on it, but to him there were a lot more dollars taken out of the employers of this state over a much longer period of time. The employers and employees all got together to say, "let's get this thing paid off".

SEN. THOMAS said he thought most of the \$63 Million is our premiums as he understood it. The reason they are in the situation in paying that money back and having it available is that everyone was doing an extraordinarily poor job under the noses of some of the people here of running the State Fund and of handling claims, or more in the fashion of not handling claims.

SEN. SHEA asked how that addresses the worker.

SEN. THOMAS answered that tons of claims were paid that probably didn't need to be paid, or shouldn't have been paid. There is probably some principles at stake here which probably won't be

taken care of. Millions more were paid out by premium payers, so he thinks we need to move forward and get rid of this problem as soon as possible.

CHAIRMAN KEATING said as a matter of fact, the State Fund did suggest a premium dividend to the policy holders but there was quite a bit of objection to the fact of giving the policy holders a dividend and still charging the payroll tax on the Old Fund Liability. So the State Fund backed away from the dividend idea until the Old Fund is finally paid off. Then if they have surpluses and want to pay dividends, that is fine. There is a give and take in this situation and **CHAIRMAN KEATING** said he shares **SEN. SHEA'S** sympathy and would like to see that payroll tax gone as soon as we can get rid of it.

SEN. MAHLUM said to look at this like the State of Montana went into Chapter 11 bankruptcy in 1990 and we are just coming out of Chapter 11, just starting to pay off the bills and once we get clear again, this will not be an imposition on the workers. We want to get out of bankruptcy and have some pride and start all over again.

SEN. BENEDICT said he thinks **SEN. THOMAS** touched on a good point and that is that the \$63.8 Million is not payroll tax dollars. It did not come from the workers, it did not come from the employers, it came from premium dollars charged to employers throughout the State of Montana. So the \$63.8 Million needs to go to pay out those old unfunded liabilities regardless of the payroll tax.

SEN. BARTLETT said the \$63.8 Million is premiated money and earned interest on that. One of the reasons we got into the situation that we got into with the Old Fund is that the premiums were artificially depressed. To that extent, the money coming from premiums paid by the employers who are suppose to paying these premiums and did not for a number of years, that seems appropriate. It is suppose to be the employers who pay the premiums, when they didn't pay those premiums all of a sudden, we ended up in a situation where we have a supposed state debt that people never covered by the State Fund and employees who were never suppose to be paying premiums, in effect, have to pay that off.

{Tape: 2; Side: B; Approx. Time Count: 2:01 p.m.}

SEN. EMERSON said going back to the reduction in the premiums, the State Fund is loosing some of their business because other companies are coming in and selling this insurance cheaper than they are, so if they want to keep that business, they also have to compete in order to help pay off the Old Fund and keep the New Fund in the black.

SEN. BARTLETT said that amendments that relate to each other, even if they are not numerical order, should be discussed. A

part of the whole set up in terms of retiring the Old Fund, unfunded liability and the transfers of money going off a summary sheet that the State Fund provided has to do with beginning in July of 1999, or when the fiscal year when the Old Fund taxes eliminated the amount in the Old Fund fiscal year ended is in excess of the adequate funding requirement for the Old Fund would be returned to the State Fund up to the amount contributed to the Old Fund after July 1, 1997. She is not sure she is understanding that. She is looking at the summary sheet from State Fund. (EXHIBIT 6) She would like to discuss what would happen once the tax is off and what is happening with the balance in the Old Fund and also a reversion of some monies to the State Fund.

SEN. BARTLETT asked once the Old Fund Liability Tax is eliminated there are some provisions in here that deal with what happens if there is any excess money in the Old Fund at a fiscal year end, what are those provisions?

Mark Barry, State Fund, answered that first of all, the State Fund has contributed approximately \$103 Million already to retire Old Fund debt. The \$63.8 Million is an addition to that. What the proposed amendment will do is after the Old Fund Taxes come off and the Old Fund is fully funded and there is that 10% contingency, the independent actuary will evaluate each year and determine if there is still a full funding plus the 10% in the Old Fund. Any amount over that amount reverts to the State Fund up to the \$63.8 Million if it is available, but according to their projections, it won't be available. In contrast to that, if the funding is less than the 10% contingency, the State Fund will pay back to the Old Fund to bring back up to that 10% contingency, up to the amount that the State Fund has received in previous years.

SEN. BARTLETT asked if she is correct in believing that overtime is accumulative to the \$63.8 Million. **Mr. Barry** answered that is correct.

CHAIRMAN KEATING asked if this is from the surplus of the balance each year of the declining unfunded liability.

Mr. Barry responded that is correct, leaving the 10% contingency in place.

SEN. BARTLETT asked **Mr. Barry** to clarify his explanation.

Mr. Barry said if in any year, the funding in the Old Fund is below the 10% contingency, the State Fund is to contribute that amount back to the Old Fund to bring it up to that 10% contingency level. That is limited to the amount the State Fund has received of that \$63.8 Million. If the State Fund does not receive any rebate, it will not contribute. If it is below 10% contingency, there will have to be another mechanism to bring it up to that contingency.

SEN. BARTLETT asked if he was implying that there is not a different mechanism to bring it up to the 10% contingency.

Mr. Barry responded other than the State Fund repaying up to the amount that they received, no.

CHAIRMAN KEATING asked if the State Fund hasn't received as much out of the surplus, then there is no other way of replacing any part of the 10%.

Mr. Barry said that is correct.

SEN. BARTLETT asked if everyone is absolutely confident that we would never have a situation where we would go beyond the 10% contingency, in fact the cash flow necessary for the Old Fund claims would be insufficient. If we don't have the 10% cushion in there but are below what is needed to help cover the claims at some point because the payroll tax is off, etc. then she would take a different look at this.

Mark Barry said that in the Old Fund projections of the independent actuary that they use, there is enough cushion in addition to the 10% to alleviate any concern that they might have.

SEN. BENEDICT said one thing that should be mentioned is once you get into a certain point with the tail, the tail is much more stable than it was in the beginning. They have gotten far enough into that tail now that they can project with uncanny accuracy, where that tail is going to end up.

SEN. BARTLETT asked **SEN. BENEDICT** if he felt confident that we are only talking about a play within that 10% margin of comfort and not something that has more serious implications.

SEN. BENEDICT said he does and if there is any indication of any crumbling in those projections, reinsurance can be bought for that tail too for a very small sum of money.

CHAIRMAN KEATING went through each section of the bill with the Committee. **(EXHIBIT 3)** There were no questions or comments on Sections 1 through 5.

Nancy Butler, State Fund explained Section 6. She said in the original bill they were going to merge the funds and therefore, wouldn't be receiving the up to \$3 Million per year to have the Old Fund and now we are not going to merge the funds, so they need that authority back. Section 6 also addresses the Supreme Court system, we want to make it clear if you are an out of state claimant you can use an out of state physician. There were no questions on Sections 7 through 9.

SEN. KEATING asked **George Wood** a question on Section 10. He asked if this increased the ability of claimants for medical benefits.

Mr. Wood responded he did not think so. What the two do together is to allow these people to act as treating physicians when they are outside the state.

Regarding Section 11, **SEN. BENEDICT** said they put some new language in there that **Jerry Driscoll** asked for. He said the language on line 19 through 22 were out of the system and they are now back in. If the insurer misses the deadline of 30 days after a suit signed by the claimant, then they have to hire a lawyer and go to Workers' Compensation Court to get claim paid.

Nancy Butler said there was a Supreme Court case in 1983 involving 'Solheim' which interpreted that section. If you miss the 30 days of either accepting or denying, you didn't automatically accept the claim, you might be subject to a penalty assessed against the insurer which is a statutory 20% penalty for delaying action by an insurer in the Workers' Compensation Act. In 1995 another Supreme Court case came along which stated to forget the interpretation they handed down in 1983, the section means if you didn't accept or deny in 30 days, you automatically accepted the claim. They are trying to put language in the statute that puts it back the way it was in the Solheim case in 1983, which does not mean automatic acceptance but that you might be subject to that 20% penalty.

SEN. BARTLETT said she felt **Mr. Driscoll** had a point in reinducting attorneys into the Workers' Compensation situation. The sentence in section (5), beginning however does make it sound like if the insurer didn't accept the claim within the 30 days, then a claimant would have to get an attorney and let them deal with the situation to get the claim recognized.

Nancy Butler responded that is the way they operated for a number of years. As she is aware, there were not problems. The State Fund tries very diligently to always beat that date.

SEN. BENEDICT asked if the sentence on line 21 after the number 7 were stopped there, and didn't add "if a claim is determined to be compensable by the workers' compensation court", that might help.

Ms. Butler said this would still require court action because that is what 2907 says. This does not change the end result.

Ms. Butler briefly explained Sections 12 through 21.

SEN. THOMAS asked on Section 22 which is stricken from the bill, if there was an amendment in there.

CHAIRMAN KEATING said that section is still in the statutes, they are not repealing it, it taken out of the bill.

Ms. Butler explained Sections 22 through 24.

{Tape: 3; Side: A; Approx. Time Count: 2:37 p.m.}

CHAIRMAN KEATING stated that State Fund's income is coming down but the administration is going up. They are losing customers but charging more administration fees.

SEN. BENEDICT said they are not losing customers, they are losing premium dollars.

Ms. Butler stated their premium dollars are down by about two-thirds and premium reductions by about one-third by loss of customers. They have found they have lost the big customers which took a lot of premium but they still have very similar work loads because of almost the same number of policy holders.

CHAIRMAN KEATING asked if they had the same work load, why can't they get it done for \$11 or \$12 Million instead of \$17 Million? Carl Swanson, State Fund, responded in fiscal 1994 they peaked at about \$181 Million. Currently they are at about \$83 Million. \$60 Million of the decrease is due to cutting premiums and rates 35% with no change in work load.

The State Fund operating expense ratio has been historically extremely low, because it was not able to do the things it should have been doing for cost containment. If they look at themselves compared to other State Funds or insurance companies the ratio was extremely low which is one reason benefit costs were so high. They weren't spending dollars where they needed to. For example, if they have a loss control safety department, they cut operating expenses but it does not mean it is healthy for their customers. They want to be able to prevent injuries and accidents.

Managed care has increased some expenses also for the State Fund. Looking at it today, the statutory cap is approximately 10% for the State Fund for fiscal year 1997. So almost 90% of the State Fund's costs are benefits. They need to try to shrink that through cost containment efforts. They weren't spending those dollars in prior years, particularly in 1993, so that is why their operating expense ratios were so low.

To give a comparison, Mr. Swanson said typically State Fund was operating around 15% operating expense ratio, but today it is 25% to 35% operating expense ratio. Private carriers are typically around 30%, in fact when they service residual markets operate around 34% to 35%. That is the kind of expense ratio you would anticipate if you are running an insurance company operation. State Fund has had just about the lowest operating expense ratio in the nation because they weren't doing many of the things they needed to be doing to shrink the 90% of their costs. The costs impact rates their customers are paying, if they can shrink the benefit costs 1% as a direct reduction in premium or rates it is a .2% impact on rates.

CHAIRMAN KEATING asked **Carl Swanson** why it costs him more now from \$11 Million to \$17 Million in administration when State Fund has fewer customers.

Mr. Swanson answered the number of customers are basically the same.

CHAIRMAN KEATING asked if they have increased their safety operation some and is that costing them.

Mr. Swanson answered they do have a greater focus on safety.

CHAIRMAN KEATING asked if that was increasing their administrative expense.

Mr. Swanson answered yes.

CHAIRMAN KEATING asked how has managed care increased expense?

Mr. Swanson answered this year there is about \$400,000 of new expense.

CHAIRMAN KEATING asked if that is their administrative expense or benefit expense?

Mr. Swanson answered it is not their administrative expense.

CHAIRMAN KEATING asked if State Fund was still earning a fee from the management of the Old Fund liability claims?

Mr. Swanson answered they are, it is \$3 Million this year, they are anticipating \$3 Million next year, then it will be dropping down to \$1.7 or \$1.8 Million and tapering down.

CHAIRMAN KEATING asked why it is costing them \$5 to \$6 Million more to do the same thing they have been doing, are they spending more on safety or on fraud or paying people more or handling more claims or whatever.

SEN. THOMAS said it seems to him since the budget has gone through in Finance and Claims, the question before the Committee deals with this artificial factor of 15%.

SEN. THOMAS said he does not believe we need an artificial factor. That is something that prior legislature installed in law and as revenues are coming down, the premiums are coming down which is good. In taking care of people, the percentage gets bigger. So, they are running into this problem of artificial percentage of 15% and he thinks the Fund is sensitive to trying to delete it entirely and they have proposed this version of it. He thinks we should eliminate the 15% cap.

SEN. BENEDICT said **Carl Swanson** came to him about six months ago to start working on this bill and one of the items was the cap.

He told him at that time that eliminating the cap would be something that would be very difficult to do because the legislature likes to feel like everybody has a cap, and to say no cap is probably a lot more difficult than saying let's go ahead and leave the cap in place but go outside the cap if they have to for some other expense. If this Committee would like to go ahead and eliminate the cap, **SEN. BENEDICT** is not sure that is a good idea as far as when it gets on the floor and starts to wander its way through the process.

To go back a little bit farther, **SEN. BENEDICT** said he has cautioned **Mr. Swanson** a number of times that the Committee does not have a Harvard MBA and sometimes he seems to talk in terms like he is talking with someone who has dealt with these things all their lives. Everyone on the Committee knows what kind of mess the State Fund was in.

CHAIRMAN KEATING said he is not trying to find fault with the Fund.

SEN. BENEDICT said when this cap was in place and put in place, these people were handling 600 to 700 claims and doing an absolutely terrible job of it. Now they have gotten themselves down to handling maybe 175 or 180 claims per claims examiner, and so you have got to have more people, you have got to have more administration, and more administrative expense. When they get into loss control and fraud and safety the administrative expense goes up.

Nancy Butler explained Sections 26 and 27.

SEN. BENEDICT said this is a bill that has been a moving target for the past six or seven months and he has appreciated all the input he has gotten on this bill. They are all moving towards trying to get that payroll tax off as soon as possible.

Nancy Butler referred to (EXHIBIT 3) the top of page 38, line 3 in making a final comment about the bill. She said that will have to be eliminated from the repealer section.

CHAIRMAN KEATING asked **SEN. BENEDICT** if there has been some significant change to the matrix of this bill since the hearing.

SEN. BENEDICT answer is inaudible.

CHAIRMAN KEATING asked if there was anybody present who testified on the original bill who had a desire to comment on the amended bill. There was no response. **CHAIRMAN KEATING** said he is not certain he really understands it all but guessed the Committee understood the scenario of it. The funds are not merged yet, there is going to be some shifting of financing here and there, the payroll tax will be coming out eventually.

SEN. EMERSON asked SEN. BENEDICT if there were any other bills waiting to be introduced which will do the same thing?

SEN. BENEDICT said he is only aware of one which cuts the payroll tax and extends it out to around year 2006.

Eddye McClure explained that there are two missing sections which should have been numbered page 37 in the grey bill (EXHIBIT 3). There are no amendments to the page missing. The missing section is 2905 which deals with time limits for filing claims, Section 28 is missing and is a transfer of funds. When the bond fund is deleted any money left in that bond fund is going to be shifted over June 30, 1997 to the State Fund's cap. Section 29 starts the repealer section which is included in the grey bill on page 38.

SEN. WILSON said there is a section he is not comfortable with on page 15 of the grey bill. On line 6 he would like to strike '30' and insert '45' days, then strike lines 19 through 22. He thinks that would force a decision to be made and that Mr. Driscoll had a good point in that leaving the language in lines 19 through 22 would force people to go through legal remedy. In order to get into the Workers' Compensation Court is a long, long process that could take up to a year.

CHAIRMAN KEATING asked if those things in the grey bill are in the amendments someplace? Eddye McClure said they are.

Motion: SEN. WILSON moved to segregate Section 11 from the amendment list of the grey bill and that 30 days be changed to 45 days and subsection (5) be deleted.

Discussion: SEN. THOMAS asked SEN. WILSON why he feels this leads to litigation.

SEN. WILSON answered it wasn't forcing the claim to be responded to. If the insurer fails to comply with this section he thinks the guy is out there hanging and this leads him to the legal system.

SEN. EMERSON asked if they are going to increase the claims by automatically accepting them.

SEN. WILSON responded no, they have to either accept or deny.

SEN. EMERSON asked if they automatically accepting them after 45 days.

SEN. WILSON answered that is correct.

SEN. BENEDICT said if we were just dealing with the 45 days then it is simply a longer period of time to accept or reject. But we are also dealing with lines 19 through 22 which say that in that 45 day period if they don't respond for some reason, then it

automatically becomes a claim. For one reason or another if it has not been responded to in that 45 day period then it becomes a claim.

CHAIRMAN KEATING asked **Nancy Butler** if she had mentioned if there was a situation where there was an oversight on the claim by the insurer and somebody took advantage of when it was ignored, it automatically became a claim.

Ms. Butler responded yes, it was the Hegg case that came down from the Supreme Court in 1995. It was a Workers' Compensation Court decision that determined the claim was fraudulent. Then it went on to Supreme Court and they said they reversed the Solheim case stating it was not an automatic acceptance, but stating if the 30 day period was missed it is an automatic acceptance. So that claim became accepted by the insurer but was determined by the Workers' Compensation Court to be a fraudulent claim so that was the problem. The penalty comes in on the insurer that if they miss the date, they get a 20% penalty.

SEN. THOMAS said the way he understands the language to be proposed unamended by **SEN. WILSON'S** motion, there is a period of time which is 30 days that the company has to notify the claimant of acceptance or denial of the claim. Then in subsection (5) it states their failure to do that does not constitute an acceptance of the claim, that is the purpose of that language. So the language on lines 19 and 20 he thinks is extremely important. He does not know if the length of days is important but the language on 19 and 20 should be retained.

Vote: The motion failed by voice vote with 3 in favor and 6 opposed. Those in favor were **SEN. BARTLETT**, **SEN. SHEA**, and **SEN. WILSON**.

Motion: **SEN. BARTLETT** moved to segregate amendments 32 and 34 and any that deal with the title for those. Those two amendments are the ones that relate to the proposed benefit increases which were in the bill when it originally came in. She would like to vote on those particular amendments separately from the overall set of amendments.

Discussion: **SEN. BENEDICT** opposed the motion because when the bill was introduced those things were there, however, in going over this bill with a number of people, it was pointed out to him several times that this is not just a State Fund bill, but is a Plan 1, 2, and 3 insurers bill. We didn't have the agreement of all the insurers that are affected by those amendments so he agreed to take out the wage loss and rehab out.

SEN. BARTLETT clarified that she was only asking to segregate those amendments from the whole package and vote on the rest of the package, then come back and vote on those separately.

CHAIRMAN KEATING said they would vote on segregating amendments 32 and 34, then vote on the balance of the amendments.

Vote: The motion carried unanimously by voice vote.

Discussion: **SEN. BARTLETT** said she believes **SEN. BENEDICT'S** comments would apply in terms of debate on the substance of those amendments. She said he is correct but she does not want to vote to take any benefit increase out when any number of people have been so ready to reduce benefits prematurely before they had any essential information on making the decision to reduce them.

Motion: **SEN. BENEDICT** moved to accept amendments 32 and 34.

Vote: The motion carried with 6 in favor and 3 opposed. Those opposing were **SEN. BARTLETT**, **SEN. SHEA** and **SEN. WILSON**.

Motion: **SEN. BENEDICT** moved SB 67 pass as amended.

Vote: The motion carried unanimously by voice vote.

EXECUTIVE ACTION ON SB 302

Amendments: None.

Note: **EXHIBITS 7 through 11.**

Motion: **SEN. EMERSON** moved to do-pass SB 302.

Motion/Vote: **SEN. BARTLETT** made a substitute motion that SB 302 be tabled. The motion failed with 4 in favor of and 5 opposing by roll call vote.

Vote: Motion failed with 4 in favor of and 5 opposing by roll call vote.

Discussion: **SEN. THOMAS** stated that he felt the Committee either needs to move this bill out in a positive manner or table the bill.

Motion: **SEN. THOMAS** moved to table SB 302.

Vote: The motion carried with 5 in favor of and 4 opposing by roll call vote.

EXECUTIVE ACTION ON SB 304

Amendments: SB030401.AEM, (EXHIBIT 12)

Motion: **SEN. SHEA** moved SB 304 do-pass.

Motion: **SEN. BENEDICT** moved the amendment.

Vote: The amendment motion carried unanimously by voice vote.

EXHIBIT NO. 3
DATE 2-15-97
BILL NO. SB67

Exhibit # 3 SB67
39 pages

The full exhibit is available from:

MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

GREY BILL FOR SENATE BILL 67

* THIS IS A REFERENCE TOOL, NOT AN OFFICIAL BILL *
* IT CANNOT BE AMENDED OR INTRODUCED *

Amendments to Senate Bill No. 67
First Reading Copy

SENATE BILL NO. 67
EMEND TO 4
DATE 2-15-97
BILL NO. SB 67

Requested by Senator Benedict
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
February 13, 1997

1. Title, lines 7 and 8.

Following: "FOR"

Strike: remainder of line 7 through "ACCOUNTS" on line 8

Insert: "THE TRANSFER OF \$63.8 MILLION TO THE OLD FUND ACCOUNT"

Strike: "PROVIDING A CONTINGENCY FOR"

2. Title, lines 9 and 10.

Following: "PERSONS"

Strike: remainder of line 9 through "STATE FUND" on line 10

Insert: "WHEN THE OLD FUND IS ADEQUATELY FUNDED; REMOVING THE
LIMITATION ON THE PAYMENT OF DIVIDENDS BY THE NEW FUND;
PROVIDING THAT THE AMOUNTS IN EXCESS OF ADEQUATE FUNDING OF
THE OLD FUND ARE RETURNED TO THE NEW FUND ACCOUNT AND THAT
ANY SHORTFALL IN ADEQUATE FUNDING IS RETURNED TO THE OLD
FUND IN AN AMOUNT EQUAL TO THAT RETURNED TO THE NEW FUND"

3. Title, line 13.

Following: line 12

Strike: line 13 through "DISABILITY;"

4. Title, line 17.

Strike: "INCREASING ACCESS TO REHABILITATION BENEFITS"

Insert: "PROVIDING FOR FRAUD INVESTIGATION AND PROSECUTION FOR
THE UNINSURED EMPLOYERS' FUND BY THE DEPARTMENT OF JUSTICE;
DEFINING "TREATING PHYSICIAN" TO INCLUDE THOSE PHYSICIANS
LICENSED IN OTHER STATES; INCLUDING PSYCHOLOGISTS AND
FUNCTIONAL CAPACITY EVALUATIONS AND PROVIDING FOR
EXAMINATIONS BY LICENSED PROVIDERS IN ANOTHER STATE WHEN
EXAMINATIONS ARE REQUESTED BY THE INSURER; ADJUSTING THE
LIFTING REQUIREMENT FOR LIGHT ACTIVITY FOR PERMANENT PARTIAL
DISABILITY BENEFITS"

5. Title, lines 20 and 21.

Following: line 19

Strike: line 20 through "LIMITATION" on line 21

Insert: "PROVIDING FOR UP TO ONE-HALF OF THE PRIOR YEAR'S
INVESTMENT INCOME FOR ADMINISTRATIVE EXPENDITURES AND FOR
REVIEW BY THE LEGISLATIVE FINANCE COMMITTEE"

6. Title, line 22.

Following: "FUND"

Strike: "AND"

Insert: ", "

Following: "JUSTICE"

Insert: ", AND THE DEPARTMENT OF LABOR AND INDUSTRY"

7. Title, line 25.

Strike: "15-30-207,"

8. Title, line 26.

Following: "39-71-406,"

Insert: "39-71-502, 39-71-605,"

9. Title, line 27.

Strike: "39-71-1006,"

Following: "39-71-2322,"

Strike: "39-71-2323,"

Following: "39-71-2327,"

Strike: "39-71-2361,"

Insert: "39-71-2351, 39-71-2352,"

10. Title, line 29.

Strike: "30-71-2351, 39-71-2352,"

11. Title, page 2, line 1.

Strike: "A CONTINGENT"

Strike: "DATE"

Insert: "DATES"

12. Page 2, lines 4 and 5.

Strike: "eliminating"

Insert: "reducing"

Following: "tax" on line 4

Strike: remainder of line 4 through "2000" on line 5

Insert: "when the old fund is adequately funded, which is
currently estimated to occur as early as June 30, 1999"

13. Page 2, lines 19 and 20.

Following: "policyholders,"

Strike: remainder of line 19 through "the" on line 20

Insert: "the state fund shall transfer \$63.8 million to the old
fund account to pay"

Following: "claims"

Strike: ", allowing"

Insert: "to allow"

14. Page 2, line 21.

Following: "policyholders"

Strike: line 21 through "tax"

15. Page 2, lines 22 through 24.

Strike: lines 22 through 24 in their entirety

16. Page 2, line 28.

Following: "appropriation"

Insert: "to the general fund in lieu of transferring additional
funds to the old fund account"

17. Page 3, line 10.

Following: "for"

Strike: "filing"

Insert: "accepting or denying"

18. Page 3, line 11.

Strike: "filing"

Insert: "the"

19. Page 4, lines 12 and 16.

Following: "fund"

Insert: "or the department of labor and industry on behalf of the
uninsured employers' fund"

20. Page 4, line 20.

Following: "fund"

Insert: ", the department of labor and industry,"

Strike: "jointly"

21. Page 4, line 21.

Strike: "a"

Insert: "one"

22. Page 4, line 23.

Following: "fund"

Insert: "and the department of labor and industry on behalf of
the uninsured employers' fund"

23. Page 4, line 25 through page 5, line 9.

Strike: section 3 in its entirety

ReNUMBER: subsequent sections

24. Page 7, line 7.

Strike: "(1)(e)"

25. Page 7, line 27.

Following: "~~services~~."

Insert: "(2) "Administer and pay" includes all actions by the
state fund under the Workers' Compensation Act and the
Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational
rehabilitation, and legal services."

ReNUMBER: subsequent subsections

26. Page 10, line 26.

Strike: "(28)"

Insert: "(29)"

27. Page 11, line 27.

Strike: "(34)(a)"

Insert: "(35)(a)"

28. Page 11, lines 29 and 30.

Strike: "or" on line 29

Following: "chapter 4" on line 30

Insert: "; or

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (35)(a) through (35)(e) who is licensed or certified in another state"

29. Page 12, lines 6 and 7.

Following: first "after"

Strike: "the dispute arises or after"

Following: "denied" on line 7

Strike: " , whichever occurs first"

30. Page 12, line 17.

Insert: "Section 9. Section 39-71-502, MCA, is amended to read:

"39-71-502. Creation and purpose of uninsured employers' fund. (1) There is created an uninsured employers' fund. The purpose of the fund is to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2); and

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015.

(2) The department may refer to the workers' compensation fraud office established in 2-15-2015 cases involving:

(a) false or fraudulent claims for benefits; or

(b) criminal violations of 45-7-501."

Section 10. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel of physicians, who that must be provided and paid for by the insurer, and shall likewise submit to examination from time to time by any physician, psychologist, or panel of physicians selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel of physicians employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results

of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel of ~~physicians~~ within the state or elsewhere ~~who have~~ that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel of ~~physicians~~ making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel of ~~physicians~~ for the examination.

(3) As used in this section, a panel of physicians includes a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.

~~(3)~~(5) This section does not apply to impairment evaluations provided for in 39-71-711."
Renumber: subsequent sections

31. Page 12, line 22.

Following: "compensation"

Insert: "signed by the claimant or the claimant's representative"

32. Page 14, lines 1 through 3.

Strike: "\$2.01 to \$4"

Insert: "more than \$2"

Following: "20%" on line 1

Strike: remainder of line 1 through "40%" on line 3

33. Page 14, line 26.

Strike: "25"

Insert: "20"

34. Page 15, line 25 through page 16, line 25.

Strike: section 13 in its entirety

Renumber: subsequent sections

35. Page 16, line 28.

Following: "fund"

Strike: "-- assumption of pre-July 1, 1990, claims"

Insert: -- payment to account for claims for injuries resulting from accidents occurring before July 1, 1990

36. Page 17, line 30.

Following: "insurers"

Insert: ", insurance associations, or insurance producers"

37. Page 18, lines 5 through 7.

Following: (2)

Strike: remainder of line 5 through "1990" on line 7

Insert: "The state fund shall, no later than June 30, 1998,
transfer \$63.8 million to the account created in 39-71-2321
to pay claims for injuries resulting from accidents that
occurred before July 1, 1990"

38. Page 18, line 10.

Strike: "(1)"

39. Page 18, line 12.

Strike: "(a)"

Insert: "(1)"

Renumber: subsequent subsections

40. Page 19, line 15.

Strike: "(k)"

Insert: "(11)"

41. Page 19, line 12.

Following: "insurers"

Insert: ", insurance associations, or insurance producers"

42. Page 19, lines 17 through 19.

Strike: subsection (2) in its entirety

43. Page 20, lines 19 and 20.

Following: "money."

Strike: "and"

Following: "39-71-2505"

Insert: ", and the interest and penalties on the taxes in
accordance with 15-1-501"

Following: "~~relate~~" on line 20

Insert: ". They must be separated into two accounts based upon
whether they relate"

Following: "to"

Strike: "pay"

44. Page 20, line 27.

Following: line 26

Insert: "(3) The proceeds of bonds issued and loans given to the
state fund under 39-71-2354 and 39-71-2355 must be deposited
in the account for claims for injuries resulting from
accidents that occurred before July 1, 1990."

45. Page 21, line 1.

Following: "money"

Insert: ", taxes collected under 39-71-2503 and 39-71-2505, and
the interest and penalties on the taxes in accordance with
15-1-501"

46. Page 21, line 2.

Following: "~~relate~~"

Insert: ". They must be separated into two accounts based upon
whether they relate"

Following: "to"
Strike: "pay"

47. Page 21, lines 17 through 26.
Strike: section 20 in its entirety
Renumber: subsequent sections

48. Page 22, lines 6 through 14.
Strike: section 22 in its entirety
Insert: "Section 21. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) ~~create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.~~

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 22. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316 and 39-71-2354, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1,

1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2) (a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 23. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. **Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. ~~Except as provided in 39-71-2316 and 39-71-2354, premiums~~ Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2) (a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Renumber: subsequent sections

49. Page 22, line 26.

Strike: "and investment income"

50. Page 22, line 28 through page 23, line 5.

Following: "(b)"

Strike: remainder of line 28 through "payments" on page 23, line

Insert: "The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year.

(c) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

(d) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations"

51. Page 26, line 12.

Following: "~~bonds-~~"

Insert: "(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Renumber: subsequent subsections

52. Page 26, line 30.

Strike: "39-71-2504"

Insert: "39-71-2321"

53. Page 27, line 4.

Strike: "state fund"

Insert: "account"

54. Page 27, line 28.

Following: "~~unfunded~~"

Strike: "for"

Insert: "of unfunded"

55. Page 27, line 29.

Strike: "or after"

56. Page 28, line 12.

Following: "~~2007-~~"

Insert: "(1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990; and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.

(2) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund

will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

Renumber: subsequent sections

57. Page 28, line 18.

Following: "subsection"

Strike: "(5)(b)"

Insert: "(7)(e)"

58. Page 28, line 24 through page 29, line 13.

Following: "employer"

Strike: remainder of line 24 through "2000." on page 29, line 13

Insert: "(7)(a) The old fund liability tax imposed under 39-71-2503 and 39-71-2505 terminates on either January 1 or July 1 of the year in which claims for injuries resulting from accidents that occurred before July 1, 1990, are projected to be adequately funded.

(b) As used in this part, "adequately funded" means the present value of:

- (i) the total cost of future benefits remaining to be paid;
- (ii) the cost of administering the claims; and
- (iii) an additional amount equal to 10% of the total of the amounts in subsections (7)(b)(i) and (7)(b)(ii).

(c) Each fiscal year until the old fund liability tax terminates, the independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability, as of the following June 30, for claims for injuries resulting from accidents that occurred before July 1, 1990.

(d) The old fund liability tax terminates on January 1 if, by October 15 of the prior year, the budget director certifies to the department that, based upon the independent actuary's selected best estimate ultimate projections and as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of January 1.

(e) The old fund liability tax terminates on July 1 if, by February 28 of the year the budget director certifies to the department that, based upon the independent actuary's selected best estimate ultimate projections and, as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of July 1.

(f) If the old fund liability tax terminates on July 1, the amount of tax imposed under subsection (5) is an amount equal to 0.1% for the full calendar year.

(g) In determining whether claims for injuries resulting from accidents that occurred before July 1, 1990, are adequately

funded, the estimated future amounts of old fund liability tax must be included.

(h) By October 1 of each year following the first full fiscal year after termination of the old fund liability tax, any funds in excess of the adequate funding amount established in subsection (7)(b) must be returned to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990. Under this section, the total amount of funds returned to the account may not exceed \$63.8 million.

(i) If, in any fiscal year after the old fund liability tax is terminated and claims for injuries resulting from accidents that occurred after July 1, 1990, are not adequately funded, any amount returned to the account in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990, pursuant to subsection (7)(h) must be transferred back to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred before July 1, 1990.

(j) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid." Renumber: subsequent subsection

59. Page 30, line 17.

Strike: "the dispute arises or after"

Following: "denied"

Strike: ", whichever occurs first"

60. Page 30, lines 23 and 24.

Following: "(1)"

Strike: remainder of line 23 through "are" on line 24

Insert: "Section 39-71-2504, MCA, is"

61. Page 30, line 25.

Following: "Sections"

Insert: "39-71-2354, 39-71-2355,"

62. Page 31, line 3.

Following: "applicability."

Insert: "(1) [Sections 6(35)(f) and 10] apply retroactively, within the meaning of 1-2-109, to claims for injuries occurring prior to [the effective date of sections 6(35)(f) and 10].

(2)"

Following: "[Section]"

Strike: "10"

Insert: "11"

63. Page 31, lines 6 and 7.

Following: "Sections" on line 6

Strike: remainder of line 6 through "29(1)" on line 7

Insert: "1 through 5, 6(1) through 6(34) and 6(36), 9, 14, 16, 17, 19, 20, 22, 24 through 27, 29, and 30(1)"

64. Page 31, lines 8 and 9.

Following: "7"

Strike: "8, 11 through 13, and 27"

Insert: "12, 13, and 28"

Following: "sections" on line 9

Strike: "8, 11 through 13, and 27"

Insert: "12, 13, and 28"

65. Page 31, line 10.

Strike: "3, 9, 15, and 18"

Insert: "8, 18, 21, 23, and 30(2)"

66. Page 31, line 11.

Strike: "26"

Insert: "27"

67. Page 31, line 12.

Strike: "29(2)"

Insert: "15"

Strike: "January 1, 2000"

Insert: "July 1, 1998"

68. Page 31, line 13.

Strike: "10, 30, 31, and 33"

Insert: "6(35), 10, 11, 31, 32, 34,

69. Page 31, lines 15 and 16.

Strike: "Contingent termination."

Insert: "Termination. (1)"

Following: "[Sections"

Strike: "14 and 17"

Insert: "17 and 22"

Following: "section" on line 16

Strike: "26"

Insert: "27"

Following: line 16

Insert: "(2) [Section 14] terminates June 30, 1998."

Amendments to Senate Bill No. 67
First Reading Copy

SENATE JOURNAL
5
DATE 2-15-97
BILL NO. SB 67

Requested by Senator Benedict
For the Senate Committee on Labor and Employment Relations

Prepared by Eddy McClure
February 13, 1997

1. Title, lines 7 and 8.

Following: "FOR"

Strike: remainder of line 7 through "ACCOUNTS" on line 8

Insert: "THE TRANSFER OF \$63.8 MILLION TO THE OLD FUND ACCOUNT"

Strike: "PROVIDING A CONTINGENCY FOR"

2. Title, lines 9 and 10.

Following: "PERSONS"

Strike: remainder of line 9 through "STATE FUND" on line 10

Insert: "WHEN THE OLD FUND IS ADEQUATELY FUNDED; REMOVING THE
LIMITATION ON THE PAYMENT OF DIVIDENDS BY THE NEW FUND;
PROVIDING THAT THE AMOUNTS IN EXCESS OF ADEQUATE FUNDING OF
THE OLD FUND ARE RETURNED TO THE NEW FUND ACCOUNT AND THAT
ANY SHORTFALL IN ADEQUATE FUNDING IS RETURNED TO THE OLD
FUND IN AN AMOUNT EQUAL TO THAT RETURNED TO THE NEW FUND"

3. Title, line 13.

Following: line 12

Strike: line 13 through "DISABILITY;"

4. Title, line 17.

Strike: "INCREASING ACCESS TO REHABILITATION BENEFITS"

Insert: "PROVIDING FOR FRAUD INVESTIGATION AND PROSECUTION FOR
THE UNINSURED EMPLOYERS' FUND BY THE DEPARTMENT OF JUSTICE;
DEFINING "TREATING PHYSICIAN" TO INCLUDE THOSE PHYSICIANS
LICENSED IN OTHER STATES; INCLUDING PSYCHOLOGISTS AND
FUNCTIONAL CAPACITY EVALUATIONS AND PROVIDING FOR
EXAMINATIONS BY LICENSED PROVIDERS IN ANOTHER STATE WHEN
EXAMINATIONS ARE REQUESTED BY THE INSURER; ADJUSTING THE
LIFTING REQUIREMENT FOR LIGHT ACTIVITY FOR PERMANENT PARTIAL
DISABILITY BENEFITS"

5. Title, lines 20 and 21.

Following: line 19

Strike: line 20 through "LIMITATION" on line 21

Insert: "PROVIDING FOR UP TO ONE-HALF OF THE PRIOR YEAR'S
INVESTMENT INCOME FOR ADMINISTRATIVE EXPENDITURES AND FOR
REVIEW BY THE LEGISLATIVE FINANCE COMMITTEE"

6. Title, line 22.

Following: "FUND"

Strike: "AND"

Insert: ", "

Following: "JUSTICE"

Insert: ", AND THE DEPARTMENT OF LABOR AND INDUSTRY"

7. Title, line 25.

Strike: "15-30-207,"

8. Title, line 26.

Following: "39-71-406,"

Insert: "39-71-502, 39-71-605,"

9. Title, line 27.

Strike: "39-71-1006,"

Following: "39-71-2322,"

Strike: "39-71-2323,"

Following: "39-71-2327,"

Strike: "39-71-2361,"

Insert: "39-71-2351, 39-71-2352,"

10. Title, line 29.

Strike: "30-71-2351, 39-71-2352,"

11. Title, line 30.

Strike: "39-71-2505,"

12. Title, page 2, line 1.

Strike: "A CONTINGENT"

Strike: "DATE"

Insert: "DATES"

13. Page 2, lines 4 and 5.

Strike: "eliminating"

Insert: "reducing"

Following: "tax" on line 4

Strike: remainder of line 4 through "2000" on line 5

Insert: "when the old fund is adequately funded, which is
currently estimated to occur as early as June 30, 1999"

14. Page 2, lines 19 and 20.

Following: "policyholders,"

Strike: remainder of line 19 through "the" on line 20

Insert: "the state fund shall transfer \$63.8 million to the old
fund account to pay"

Following: "claims"

Strike: ", allowing"

Insert: "to allow"

15. Page 2, line 21.

Following: "policyholders"

Strike: line 21 through "tax"

16. Page 2, lines 22 through 24.

Strike: lines 22 through 24 in their entirety

17. Page 2, line 28.

Following: "appropriation"

Insert: "to the general fund in lieu of transferring additional
funds to the old fund account"

18. Page 3, line 10.

Following: "for"

Strike: "filing"

Insert: "accepting or denying"

19. Page 3, line 11.

Strike: "filing"

Insert: "the"

20. Page 4, lines 12 and 16.

Following: "fund"

Insert: "or the department of labor and industry on behalf of the
uninsured employers' fund"

21. Page 4, line 20.

Following: "fund"

Insert: ", the department of labor and industry,"

Strike: "jointly"

22. Page 4, line 21.

Strike: "a"

Insert: "one"

23. Page 4, line 23.

Following: "fund"

Insert: "and the department of labor and industry on behalf of
the uninsured employers' fund"

24. Page 4, line 25 through page 5, line 9.

Strike: section 3 in its entirety

Re-number: subsequent sections

25. Page 7, line 7.

Strike: "(1)(e)"

26. Page 7, line 27.

Following: "~~services.~~"

Insert: "(2) "Administer and pay" includes all actions by the
state fund under the Workers' Compensation Act and the
Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational
rehabilitation, and legal services."

Re-number: subsequent subsections

27. Page 10, line 26.

Strike: "(28)"

Insert: "(29)"

28. Page 11, line 27.

Strike: "(34)(a)"

Insert: "(35)(a)"

29. Page 11, lines 29 and 30.

Strike: "or" on line 29

Following: "chapter 4" on line 30

Insert: "; or

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (35)(a) through (35)(e) who is licensed or certified in another state"

30. Page 12, lines 6 and 7.

Following: first "after"

Strike: "the dispute arises or after"

Following: "denied" on line 7

Strike: ", whichever occurs first"

31. Page 12, line 17.

Insert: "**Section 9.** Section 39-71-502, MCA, is amended to read:

"39-71-502. Creation and purpose of uninsured employers' fund. (1) There is created an uninsured employers' fund. The purpose of the fund is to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2); and

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015.

(2) The department may refer to the workers' compensation fraud office established in 2-15-2015 cases involving:

(a) false or fraudulent claims for benefits; or

(b) criminal violations of 45-7-501."

Section 10. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel of physicians, who that must be provided and paid for by the insurer, and shall likewise submit to examination from time to time by any physician, psychologist, or panel of physicians selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel of physicians

employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel ~~of physicians~~ within the state or elsewhere ~~who have that has~~ had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel ~~of physicians~~ making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel ~~of physicians~~ for the examination.

(3) As used in this section, a panel of physicians includes a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.

~~(3)~~(5) This section does not apply to impairment evaluations provided for in 39-71-711."
Renumber: subsequent sections

32. Page 12, line 22.

Following: "compensation"

Insert: "signed by the claimant or the claimant's representative"

33. Page 14, lines 1 through 3.

Strike: "\$2.01 to \$4"

Insert: "more than \$2"

Following: "20%" on line 1

Strike: remainder of line 1 through "40%" on line 3

34. Page 14, line 26.

Strike: "25"

Insert: "20"

35. Page 15, line 25 through page 16, line 25.

Strike: section 13 in its entirety

Renumber: subsequent sections

36. Page 16, line 28.

Following: "fund"

Strike: "-- assumption of pre-July 1, 1990, claims"

Insert: -- payment to account for claims for injuries resulting from accidents occurring before July 1, 1990

37. Page 17, line 30.

Following: "insurers"

Insert: ", insurance associations, or insurance producers"

38. Page 18, lines 5 through 7.

Following: (2)

Strike: remainder of line 5 through "1990" on line 7

Insert: "The state fund shall, no later than June 30, 1998,
transfer \$63.8 million to the account created in 39-71-2321
to pay claims for injuries resulting from accidents that
occurred before July 1, 1990"

39. Page 18, line 10.

Strike: "(1)"

40. Page 18, line 12.

Strike: "(a)"

Insert: "(1)"

Renumber: subsequent subsections

41. Page 19, line 15.

Strike: "(k)"

Insert: "(11)"

42. Page 19, line 12.

Following: "insurers"

Insert: ", insurance associations, or insurance producers"

43. Page 19, lines 17 through 19.

Strike: subsection (2) in its entirety

44. Page 20, lines 19 and 20.

Following: "money."

Strike: "and"

Following: "39-71-2505"

Insert: ", and the interest and penalties on the taxes in
accordance with 15-1-501"

Following: "~~relate~~" on line 20

Insert: ". They must be separated into two accounts based upon
whether they relate"

Following: "to"

Strike: "pay"

45. Page 20, line 27.

Following: line 26

Insert: "(3) The proceeds of bonds issued and loans given to the
state fund under 39-71-2354 and 39-71-2355 must be deposited
in the account for claims for injuries resulting from
accidents that occurred before July 1, 1990."

46. Page 21, line 1.

Following: "money"

Insert: ", taxes collected under 39-71-2503 and 39-71-2505, and
the interest and penalties on the taxes in accordance with
15-1-501"

47. Page 21, line 2.

Following: "~~relate~~"

Insert: ". They must be separated into two accounts based upon

whether they relate"
Following: "to"
Strike: "pay"

48. Page 21, lines 17 through 26.
Strike: section 20 in its entirety
Renumber: subsequent sections

49. Page 22, lines 6 through 14.
Strike: section 22 in its entirety
Insert: "Section 21. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) ~~create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.~~

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 22. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in ~~39-71-2316 and 39-71-2354~~, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for

injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 23. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. ~~Except as provided in 39-71-2316 and 39-71-2354, premiums~~ Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Renumber: subsequent sections

50. Page 22, line 26.

Strike: "and investment income"

51. Page 22, line 28 through page 23, line 5.

Following: "(b)"

Strike: remainder of line 28 through "payments" on page 23, line

11X

Insert: "The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year."

(c) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

(d) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations"

52. Page 26, line 12.

Following: "~~bonds~~."

Insert: "(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Renumber: subsequent subsections

53. Page 26, line 30.

Strike: "39-71-2504"

Insert: "39-71-2321"

54. Page 27, line 4.

Strike: "state fund"

Insert: "account"

55. Page 27, line 28.

Following: "~~unfunded~~"

Strike: "for"

Insert: "of unfunded"

56. Page 27, line 29.

Strike: "or after"

57. Page 28, line 12.

Following: "~~2007~~."

Insert: "(1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year."

(2) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget

director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

Renumber: subsequent sections

58. Page 28, line 18.

Following: "subsection"

Strike: "(5)(b)"

Insert: "(7)(e)"

59. Page 28, line 24 through page 29, line 13.

Following: "~~employer~~"

Strike: remainder of line 24 through "2000." on page 29, line 13

Insert: "(7)(a) The old fund liability tax imposed under 39-71-2503 and 39-71-2505 terminates on either January 1 or July 1 of the year in which claims for injuries resulting from accidents that occurred before July 1, 1990, are projected to be adequately funded.

(b) As used in this part, "adequately funded" means the present value of:

- (i) the total cost of future benefits remaining to be paid;
- (ii) the cost of administering the claims; and
- (iii) an additional amount equal to 10% of the total of the amounts in subsections (7)(b)(i) and (7)(b)(ii).

(c) Each fiscal year until the old fund liability tax terminates, the independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability, as of the following June 30, for claims for injuries resulting from accidents that occurred before July 1, 1990.

(d) The old fund liability tax terminates on January 1 if, by October 15 of the prior year, the budget director certifies to the department that, based upon the independent actuary's selected best estimate ultimate projections and as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of January 1.

(e) The old fund liability tax terminates on July 1 if, by February 28 of the year the budget director certifies to the department that, based upon the independent actuary's selected best estimate ultimate projections and, as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of July 1.

(f) If the old fund liability tax terminates on July 1, the amount of tax imposed under subsection (5) is an amount equal to 0.1% for the full calendar year.

(g) In determining whether claims for injuries resulting

from accidents that occurred before July 1, 1990, are adequately funded, the estimated future amounts of old fund liability tax must be included.

(h) By October 1 of each year following the first full fiscal year after termination of the old fund liability tax, any funds in excess of the adequate funding amount established in subsection (7)(b) must be returned to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990. Under this section, the total amount of funds returned to the account may not exceed \$63.8 million.

(i) If, in any fiscal year after the old fund liability tax is terminated and claims for injuries resulting from accidents that occurred after July 1, 1990, are not adequately funded, any amount returned to the account in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990, pursuant to subsection (7)(h) must be transferred back to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred before July 1, 1990.

(j) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid." Renumber: subsequent subsection

60. Page 30, line 17.

Strike: "the dispute arises or after"

Following: "denied"

Strike: ", whichever occurs first"

61. Page 30, lines 23 and 24.

Following: "(1)"

Strike: remainder of line 23 through "are" on line 24

Insert: "Section 39-71-2504, MCA, is"

62. Page 30, line 25.

Following: "Sections"

Insert: "39-71-2354, 39-71-2355,"

Following: "39-71-2503,"

Strike: "39-71-2505,"

63. Page 31, line 3.

Following: "**applicability.**"

Insert: "(1) [Sections 6(35)(f) and 10] apply retroactively, within the meaning of 1-2-109, to claims for injuries occurring prior to [the effective date of sections 6(35)(f) and 10].

(2)"

Following: "[Section"

Strike: "10"

Insert: "11"

64. Page 31, lines 6 and 7.

Following: "Sections" on line 6

Strike: remainder of line 6 through "29(1)" on line 7

Insert: "1 through 5, 6(1) through 6(34) and 6(36), 9, 14, 16,
17, 19, 20, 22, 24 through 27, 29, and 30(1)"

65. Page 31, lines 8 and 9.

Following: "7"

Strike: "8, 11 through 13, and 27"

Insert: "12, 13, and 28"

Following: "sections" on line 9

Strike: "8, 11 through 13, and 27"

Insert: "12, 13, and 28"

66. Page 31, line 10.

Strike: "3, 9, 15, and 18"

Insert: "8, 18, 21, 23, and 30(2)"

67. Page 31, line 11.

Strike: "26"

Insert: "27"

68. Page 31, line 12.

Strike: "29(2)"

Insert: "15"

Strike: "January 1, 2000"

Insert: "July 1, 1998"

69. Page 31, line 13.

Strike: "10, 30, 31, and 33"

Insert: "6(35), 10, 11, 31, 32, 34,

70. Page 31, lines 15 and 16.

Strike: "**Contingent termination.**"

Insert: "Termination. (1)"

Following: "[Sections"

Strike: "14 and 17"

Insert: "17 and 22"

Following: "section" on line 16

Strike: "26"

Insert: "27"

Following: line 16

Insert: "(2) [Section 14] terminates June 30, 1998."

STATE COMPENSATION INSURANCE FUND

DATE 2-15-97
BILL NO. SB 67

SURPLUS OF NEW AND OLD FUNDS

(No Merger of Funds. OFLT is Eliminated 6/30/99)

	NEW FUND	OLD FUND
SURPLUS AT JULY 1, 1997*	\$150,526,502	(\$198,648,481)
Operating Results FY 98	\$10,701,916	\$51,520,227 a
Payment to General Fund	(10,000,000)	
Payment to Old Fund	(63,800,000)	63,800,000
<u>FY 1998 Changes to Surplus</u>	<u>(\$63,098,084)</u>	<u>\$115,320,227</u>
SURPLUS AT JULY 1, 1998*	\$87,428,418	(\$83,328,254)
Operating Results FY 98	\$3,365,526	\$97,341,910 b
Payment to General Fund	(10,000,000)	
<u>FY 1999 Changes to Surplus</u>	<u>(\$6,634,474)</u>	<u>\$97,341,910</u>
SURPLUS AT July 1, 1999**	\$80,793,944	\$14,013,656
Required Surplus of OF (10% of Liabilities)		\$13,092,477

* Old Fund not discounted

** Old Fund at Present Value (discounted 5.75%)

a - Includes OFLT of \$49.9 million and \$4.6 million investment income

b - OFLT of \$51.3 million, investment income of \$9.9 million, and adjustment to present value of claim liability of \$38 million.

122

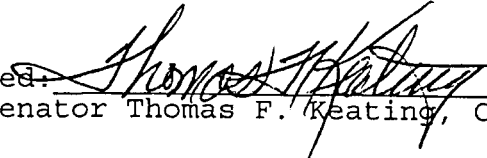


SENATE STANDING COMMITTEE REPORT

Page 1 of 14
February 17, 1997

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill 67 (first reading copy -- white), respectfully report that Senate Bill 67 be amended as follows and as so amended do pass.

Signed: 
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, lines 7 and 8.

Following: "FOR"

Strike: remainder of line 7 through "ACCOUNTS" on line 8

Insert: "THE TRANSFER OF \$63.8 MILLION TO THE OLD FUND ACCOUNT"

Strike: "PROVIDING A CONTINGENCY FOR"

2. Title, lines 9 and 10.

Following: "PERSONS"

Strike: remainder of line 9 through "STATE FUND" on line 10

Insert: "WHEN THE OLD FUND IS ADEQUATELY FUNDED; REMOVING THE
LIMITATION ON THE PAYMENT OF DIVIDENDS BY THE NEW FUND;
PROVIDING THAT THE AMOUNTS IN EXCESS OF ADEQUATE FUNDING OF
THE OLD FUND ARE RETURNED TO THE NEW FUND ACCOUNT AND THAT
ANY SHORTFALL IN ADEQUATE FUNDING IS RETURNED TO THE OLD
FUND IN AN AMOUNT EQUAL TO THAT RETURNED TO THE NEW FUND"

3. Title, line 13.

Following: line 12

Strike: line 13 through "DISABILITY;"

4. Title, line 17.

Strike: "INCREASING ACCESS TO REHABILITATION BENEFITS"

Insert: "PROVIDING FOR FRAUD INVESTIGATION AND PROSECUTION FOR
THE UNINSURED EMPLOYERS' FUND BY THE DEPARTMENT OF JUSTICE;
DEFINING "TREATING PHYSICIAN" TO INCLUDE THOSE PHYSICIANS
LICENSED IN OTHER STATES; INCLUDING PSYCHOLOGISTS AND
FUNCTIONAL CAPACITY EVALUATIONS AND PROVIDING FOR
EXAMINATIONS BY LICENSED PROVIDERS IN ANOTHER STATE WHEN
EXAMINATIONS ARE REQUESTED BY THE INSURER; ADJUSTING THE
LIFTING REQUIREMENT FOR LIGHT ACTIVITY FOR PERMANENT PARTIAL
DISABILITY BENEFITS"


Amd. Coord.
508 Sec. of Senate

371130SC.SRF

123

5. Title, lines 20 and 21.

Following: line 19

Strike: line 20 through "LIMITATION" on line 21

Insert: "PROVIDING FOR UP TO ONE-HALF OF THE PRIOR YEAR'S
INVESTMENT INCOME FOR ADMINISTRATIVE EXPENDITURES AND FOR
REVIEW BY THE LEGISLATIVE FINANCE COMMITTEE"

6. Title, line 22.

Following: "FUND"

Strike: "AND"

Insert: ", "

Following: "JUSTICE"

Insert: ", AND THE DEPARTMENT OF LABOR AND INDUSTRY"

7. Title, line 25.

Strike: "15-30-207,"

8. Title, line 26.

Following: "39-71-406,"

Insert: "39-71-502, 39-71-605,"

9. Title, line 27.

Strike: "39-71-1006,"

Following: "39-71-2322,"

Strike: "39-71-2323,"

Following: "39-71-2327,"

Strike: "39-71-2361,"

Insert: "39-71-2351, 39-71-2352,"

10. Title, line 29.

Strike: "30-71-2351, 39-71-2352,"

11. Title, line 30.

Strike: "39-71-2505,"

12. Title, page 2, line 1.

Strike: "A CONTINGENT"

Strike: "DATE"

Insert: "DATES"

13. Page 2, lines 4 and 5.

Strike: "eliminating"

Insert: "reducing"

Following: "tax" on line 4

Strike: remainder of line 4 through "2000" on line 5

Insert: "when the old fund is adequately funded, which is
currently estimated to occur as early as June 30, 1999"

14. Page 2, lines 19 and 20.

Following: "policyholders,"

Strike: remainder of line 19 through "the" on line 20

Insert: "the state fund shall transfer \$63.8 million to the old
fund account to pay"

Following: "claims"

Strike: ", allowing"

Insert: "to allow"

15. Page 2, line 21.

Following: "policyholders"

Strike: line 21 through "tax"

16. Page 2, lines 22 through 24.

Strike: lines 22 through 24 in their entirety

17. Page 2, line 28.

Following: "appropriation"

Insert: "to the general fund in lieu of transferring additional
funds to the old fund account"

18. Page 3, line 10.

Following: "for"

Strike: "filing"

Insert: "accepting or denying"

19. Page 3, line 11.

Strike: "filing"

Insert: "the"

20. Page 4, lines 12 and 16.

Following: "fund"

Insert: "or the department of labor and industry on behalf of the
uninsured employers' fund"

21. Page 4, line 20.

Following: "fund"

Insert: ", the department of labor and industry,"

Strike: "jointly"

22. Page 4, line 21.

Strike: "a"

Insert: "one"

23. Page 4, line 23.

Following: "fund"

Insert: "and the department of labor and industry on behalf of
the uninsured employers' fund"

24. Page 4, line 25 through page 5, line 9.
Strike: section 3 in its entirety
Renumber: subsequent sections

25. Page 7, line 7.
Strike: "(1)(e)"

26. Page 7, line 27.
Following: "~~services.~~"
Insert: "(2) 'Administer and pay' includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:
(a) investigation, review, and settlement of claims;
(b) payment of benefits;
(c) setting of reserves;
(d) furnishing of services and facilities; and
(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services."
Renumber: subsequent subsections

27. Page 10, line 26.
Strike: "(28)"
Insert: "(29)"

28. Page 11, line 27.
Strike: "(34)(a)"
Insert: "(35)(a)"

29. Page 11, lines 29 and 30.
Strike: "or" on line 29
Following: "chapter 4" on line 30
Insert: "; or
(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (35)(a) through (35)(e) who is licensed or certified in another state"

30. Page 12, lines 6 and 7.
Following: first "after"
Strike: "the dispute arises or after"
Following: "denied" on line 7
Strike: ", whichever occurs first"

31. Page 12, line 17.
Insert: "Section 9. Section 39-71-502, MCA, is amended to read:
"39-71-502. **Creation and purpose of uninsured employers' fund.** (1) There is created an uninsured employers' fund. The purpose of the fund is to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2); and

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015.

(2) The department may refer to the workers' compensation fraud office established in 2-15-2015 cases involving:

(a) false or fraudulent claims for benefits; or

(b) criminal violations of 45-7-501."

Section 10. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel of physicians, who that must be provided and paid for by the insurer, and shall likewise submit to examination from time to time by any physician, psychologist, or panel of physicians selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel of physicians employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel of physicians within the state or elsewhere who have that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel of physicians making the

examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel of ~~physicians~~ for the examination.

(3) As used in this section, a panel of physicians includes a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.

~~(3)~~ (5) This section does not apply to impairment evaluations provided for in 39-71-711."

Renumber: subsequent sections

32. Page 12, line 22.

Following: "compensation"

Insert: "signed by the claimant or the claimant's representative"

33. Page 14, lines 1 through 3.

Strike: "\$2.01 to \$4"

Insert: "more than \$2"

Following: "20%" on line 1

Strike: remainder of line 1 through "40%" on line 3

34. Page 14, line 26.

Strike: "25"

Insert: "20"

35. Page 15, line 25 through page 16, line 25.

Strike: section 13 in its entirety

Renumber: subsequent sections

36. Page 16, line 28.

Following: "fund"

Strike: "-- assumption of pre-July 1, 1990, claims"

Insert: "-- payment to account for claims for injuries resulting from accidents occurring before July 1, 1990

37. Page 17, line 30.

Following: "insurers"

Insert: ", insurance associations, or insurance producers"

38. Page 18, lines 5 through 7.

Following: (2)

Strike: remainder of line 5 through "1990" on line 7

Insert: "The state fund shall, no later than June 30, 1998, transfer \$63.8 million to the account created in 39-71-2321

to pay claims for injuries resulting from accidents that occurred before July 1, 1990"

39. Page 18, line 10.
Strike: "(1)"

40. Page 18, line 12.
Strike: "(a)"
Insert: "(1)"
ReNUMBER: subsequent subsections

41. Page 19, line 12.
Following: "insurers"
Insert: ", insurance associations, or insurance producers"

42. Page 19, line 15.
Strike: "(k)"
Insert: "(11)"

43. P43. Page 19, lines 17 through 19.
Strike: subsection (2) in its entirety

44. Page 20, lines 19 and 20.
Following: "money,"
Strike: "and,"
Following: "39-71-2505"
Insert: ", and the interest and penalties on the taxes in accordance with 15-1-501"
Following: "relate" on line 20
Insert: ". They must be separated into two accounts based upon whether they relate"
Following: "to"
Strike: "pay"

45. Page 20, line 27.
Following: line 26
Insert: "(3) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

46. Page 21, line 1.
Following: "money"
Insert: ", taxes collected under 39-71-2503 and 39-71-2505, and the interest and penalties on the taxes in accordance with 15-1-501"

47. Page 21, line 2.

Following: "~~relate~~"

Insert: ". They must be separated into two accounts based upon whether they relate"

Following: "to"

Strike: "pay"

48. Page 21, lines 17 through 26.

Strike: section 20 in its entirety

Renumber: subsequent sections

49. Page 22, lines 6 through 14.

Strike: section 22 in its entirety

Insert: "Section 21. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to-

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) ~~create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.~~

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 22. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in ~~39-71-2316~~ and 39-71-2354, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 23. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. ~~Except as provided in 39-71-2316 and 39-71-2354, premiums~~ Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Renumber: subsequent sections

50. Page 22, line 26.

Strike: "and investment income"

51. Page 22, line 28 through page 23, line 5.

Following: "(b)"

Strike: remainder of line 28 through "payments" on page 23, line 5

Insert: "The board may approve administrative expenditures in excess of 15% of the earned annual premium of the prior fiscal year, but the excess amount approved may not exceed one-half of the investment income earned in the prior fiscal year.

(c) Upon approval of the estimated budget for the succeeding fiscal year, the state fund shall, no later than October 1 of each year, submit the approved annual budget for review to the legislative finance committee established under 5-12-201.

(d) Dividends may not be included as administrative expenditures as provided in subsection (2)(a), but are a disbursement of excess surplus pursuant to 39-71-2323 after a determination by the state fund of income from operations"

52. Page 26, line 12.

Following: "~~bonds~~."

Insert: "(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Renumber: subsequent subsections

53. Page 26, line 30.

Strike: "39-71-2504"

Insert: "39-71-2321"

54. Page 27, line 4.

Strike: "state fund"

Insert: "account"

55. Page 27, line 28.
Following: "~~unfunded~~"
Strike: "for"
Insert: "of unfunded"

56. Page 27, line 29.
Strike: "or after"

57. Page 28, line 12.
Following: "~~2007-~~"
Insert: "(1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.

(2) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

Renumber: subsequent sections

58. Page 28, line 18.
Following: "subsection"
Strike: "(5)(b)"
Insert: "(7)(e)"

59. Page 28, line 24 through page 29, line 13.
Following: "~~employer~~"
Strike: remainder of line 24 through "2000." on page 29, line 13
Insert: "(7)(a) The old fund liability tax imposed under 39-71-2503 and 39-71-2505 terminates on either January 1 or July 1 of the year in which claims for injuries resulting from accidents that occurred before July 1, 1990, are projected

to be adequately funded.

(b) As used in this part, "adequately funded" means the present value of:

- (i) the total cost of future benefits remaining to be paid;
- (ii) the cost of administering the claims; and
- (iii) an additional amount equal to 10% of the total of the amounts in subsections (7)(b)(i) and (7)(b)(ii).

(c) Each fiscal year until the old fund liability tax terminates, the independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability, as of the following June 30, for claims for injuries resulting from accidents that occurred before July 1, 1990.

(d) The old fund liability tax terminates on January 1 if, by October 15 of the prior year, the budget director certifies to the department that, based upon the independent actuary's selected best estimate ultimate projections and as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of January 1.

(e) The old fund liability tax terminates on July 1 if, by February 28 of the year the budget director certifies to the department that, based upon the independent actuary's selected best estimate ultimate projections and, as approved by the state fund board of directors, claims for injuries resulting from accidents that occurred before July 1, 1990, will be adequately funded as of July 1.

(f) If the old fund liability tax terminates on July 1, the amount of tax imposed under subsection (5) is an amount equal to 0.1% for the full calendar year.

(g) In determining whether claims for injuries resulting from accidents that occurred before July 1, 1990, are adequately funded, the estimated future amounts of old fund liability tax must be included.

(h) By October 1 of each year following the first full fiscal year after termination of the old fund liability tax, any funds in excess of the adequate funding amount established in subsection (7)(b) must be returned to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990. Under this section, the total amount of funds returned to the account may not exceed \$63.8 million.

(i) If, in any fiscal year after the old fund liability tax is terminated and claims for injuries resulting from accidents that occurred after July 1, 1990, are not adequately funded, any amount returned to the account in 39-71-2321 to pay claims for injuries resulting from accidents that occurred after July 1, 1990, pursuant to subsection (7)(h) must be transferred back to the account established in 39-71-2321 to pay claims for injuries

resulting from accidents that occurred before July 1, 1990.

(j) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."
Renumber: subsequent subsection

60. Page 30, line 17.

Strike: "the dispute arises or after"

Following: "denied"

Strike: ", whichever occurs first"

61. Page 30, lines 23 and 24.

Following: "(1)"

Strike: remainder of line 23 through "are" on line 24

Insert: "Section 39-71-2504, MCA, is"

62. Page 30, line 25.

Following: "Sections"

Insert: "39-71-2354, 39-71-2355,"

Following: "39-71-2503,"

Strike: "39-71-2505,"

63. Page 31, line 3.

Following: "~~applicability~~."

Insert: "(1) [Sections 6(35)(f) and 10] apply retroactively, within the meaning of 1-2-109, to claims for injuries occurring prior to [the effective date of sections 6(35)(f) and 10].
(2)"

Following: "[Section"

Strike: "10"

Insert: "11"

64. Page 31, lines 6 and 7.

Following: "Sections" on line 6

Strike: remainder of line 6 through "29(1)" on line 7

Insert: "1 through 5, 6(1) through 6(34) and 6(36), 9, 14, 16, 17, 19, 20, 22, 24 through 27, 29, and 30(1)"

65. Page 31, lines 8 and 9.

Following: "7,"

Strike: "8, 11 through 13, and 27"

Insert: "12, 13, and 28"

Following: "7," on line 9

Strike: "8, 11 through 13, and 27"

Insert: "12, 13, and 28"

66. Page 31, line 10.
Strike: "3, 9, 15, and 18"
Insert: "8, 18, 21, 23, and 30(2)"

67. Page 31, line 11.
Strike: "26"
Insert: "27"

68. Page 31, line 12.
Strike: "29(2)"
Insert: "15"
Strike: "January 1, 2000"
Insert: "July 1, 1998"

69. Page 31, line 13.
Strike: "10, 30, 31, and 33"
Insert: "6(35), 10, 11, 31, 32, 34,

70. Page 31, lines 15 and 16.
Strike: "Contingent termination."
Insert: "Termination. (1)"
Following: "[Sections"
Strike: "14 and 17"
Insert: "17 and 22"
Following: "section" on line 16
Strike: "26"
Insert: "27"
Following: line 16
Insert: "(2) [Section 14] terminates June 30, 1998."

-END-

DATE 2-15-97

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 67

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
<i>Culhnan</i>	<i>State Fund</i>	<i>SB 67</i>	☒	☐
<i>Carl Schweitzer</i>	<i>MT Cont Ass'n</i>	<i>SB 307</i>	☒	☐
<i>Nancy Butler</i>	<i>State Fund</i>	<i>SB 307</i>	☐	☒
<i>Nancy Butler</i>	<i>State Fund</i>	<i>SB 304</i>	☒	☐
<i>Bob Northington</i>	<i>NIHIA</i>	<i>SB 307</i>	☐	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0067, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

This bill generally revises workers' compensation laws; increases the Board to seven members and one member may be an insurance producer; provides for the transfer of \$63.8 million to the Old Fund account; terminates the old fund liability tax on employers, employees, and self-employed persons when the Old Fund is adequately funded; removes the limitation on the payment of dividends by the New Fund; provides that the amounts in excess of adequate funding of the Old Fund are returned to the New Fund account and that any shortfall in adequate funding is returned to the Old Fund in an amount equal to that returned to the New Fund; clarify definition of 'dependent' for fatal injury beneficiary claims; provides that an insurer's failure to meet time limits is not acceptance of claim; provides for worker who has not reached maximum healing, but who is released by a treating physician and refusing an offer of employment in alternative position at equal or higher wages is not eligible for temporary partial disability benefits; provides for fraud investigation and prosecution for the uninsured employers' fund by the Department of Justice; defining 'treating physician' to include those physicians licensed in other states; including psychologist and functional capacity evaluations and providing for examinations by licensed providers in another state when examinations are requested by the insurer; adjusting the lifting requirement for light activity for permanent partial disability benefits; authorizes 'other states' coverage; clarifies use of licensed insurance producers; requires State Fund to repay \$20 million to the general fund; provides for up to one-half of the prior year's investment income for administrative expenditures and for review by the Legislative Finance Committee; limits time for resolving benefits dispute; requires State Fund, the Department of Justice, and the Department of Labor and Industry to file a joint biennial budget for the Workers' Compensation Fraud Office; provides for transfer of balance of workers' compensation bond repayment account to State Fund on 6/30/97.

ASSUMPTIONS:

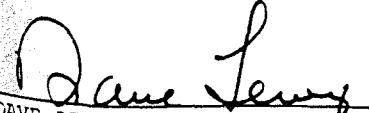
Increasing Board Size:

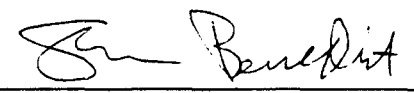
1. Current Board has five members and will add two additional members increasing Board membership to seven.
2. Membership of the increased Board will be structured as follows: at least four members who must represent State Fund policyholders; at least four members who shall represent private, for-profit enterprises; and one of the members who may be a licensed insurance producer.
3. The State Fund Board of Directors meets twelve times a year.
4. Each Board member is entitled to a \$50 per diem and reimbursement for travel, lodging, and meals, at state rates. This will increase annual expenditures for Board members by \$3,600 for each year of the biennium.

Workers' Compensation Fraud:

5. The State Fund, the Department of Justice, and the Department of Labor and Industry, shall submit to the legislature one biennial budget request for the Workers' Compensation Fraud Office.
6. The proposed budget for staff and related expenses will be based on the needs of the State Fund and the Department of Labor and Industry, on behalf of the uninsured employers' fund, for investigating and prosecuting workers' compensation insurance fraud.
7. The Workers' Compensation Fraud Office will staff one or more investigators and one or more prosecutors.
8. All funding for the Workers' Compensation Fraud Office will be provided by the State Fund as generated through premium income or the uninsured employers' fund. Funding for the uninsured employers' fund comes from an assessment charged to all Plan 1, 2, and 3 insurers. The Department of Labor and Industry estimates that it will require a \$50,000 per year appropriation to implement for the uninsured employers' fund.
9. Licensed insurance producers are required to notify the State Fund's Fraud Detection and Prevention Unit of alleged fraud within 60 days.

(Continued)

 3.13.97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3/13/97
STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0067, third reading

Am SB 67 #2

Policyholder Services:

10. The State Fund may contract with licensed resident insurance producers.
11. Insurance producers will be local ombudsmen for policyholders and provide enhanced services.
12. These policyholder services are normally provided by State Fund insurers. The State Fund will use the existing expertise of licensed insurance producers in the private sector.
13. Insurance producers will receive commissions on policies placed with the State Fund. It is estimated that commission expenditures for FY98 will be \$151,679 and FY99 will be \$1,045,224.
14. The net impact for FY98 is \$104,900 and includes: \$3,033,573 in new premiums produced by agents; less \$2,602,122 benefit payments and loss adjustment expense on that business; and less \$326,551 for commissions, agent incentive plan, State Fund expenses, and agent training costs.
15. The net impact for FY99 is \$1,189,431 and includes: \$20,904,475 in new and renewal premiums produced by agents; less \$17,931,334 benefit payments and loss adjustment expense on that business; and less \$1,783,710 for commissions, agent incentive plan, State Fund expenses, and agent training costs.
16. Other states coverage is a new service the State Fund may offer to policyholders. The State Fund may enter into agreements with workers' compensation insurers, insurance associations, or insurance producers to coordinate workers' compensation coverage in other states to Montana-domiciled employers insured with the State Fund. The fiscal impact is neutral.

Elimination of Old Fund Liability Tax (OFLT):

17. The State Fund shall, no later than June 30, 1998, transfer \$63.8 million to the account created to pay claims for injuries resulting from accidents that occurred before July 1, 1990.
18. The Old Fund will continue to receive OFLT collections until claims liabilities are projected to be 'adequately funded'.
19. 'Adequately funded' is defined as (A) the present value of the total cost of future benefits remaining to be paid plus (B) the cost of administering the claims plus an amount equal to 10% of A and B. The current law requires Old Fund reserves to be maintained on an undiscounted basis.
20. The projections to determine if the Old Fund is 'adequately funded' will take place twice a year, by October 15th and by February 28th. The projections will continue until the Old Fund is certified by the Budget Director to be 'adequately funded'.
21. If after the October 15th projection the Old Fund is projected to be 'adequately funded' the OFLT will be terminated as of January 1. If after the February 28th projection the Old Fund is projected to be 'adequately funded' the OFLT will be terminated as of July 1.
22. If the OFLT terminates on July 1, the OFLT imposed upon self-employed is an amount equal to .1% for the full calendar year.
23. If after the OFLT is terminated and it is determined the Old Fund has an excess of funding the excess amount will be transferred to the New Fund.
24. If, in any fiscal year after the OFLT is terminated, the Old Fund is not 'adequately funded' any amount transferred to the New Fund from the Old Fund must be returned to the Old Fund.
25. An independent actuary engaged by the State Fund shall project the unpaid claims of the Old Fund each year until the claims are paid.
26. The State Fund Board will have the authority to declare dividends, payable to policyholders, if there is an excess of assets over liabilities in the New Fund and actuarially determined reserves have been set aside. This will no longer be contingent upon the termination of the OFLT.
27. The OFLT revenues, as projected by State Fund staff, are anticipated to be \$123.9 million between 7/1/96 and 12/31/98. FY97 - \$48,427,000; FY98 - \$49,857,000; FY99 - \$51,330,000.
28. The fund balance of the Old Fund was (\$355.1 million) as of 6/30/96. This does not reflect the dividend from the New Fund to the Old Fund of up to \$109 million declared 9/24/96.

\$20 Million Repayment To General Fund:

29. During the June 1989 Special Session \$20 million of general fund was appropriated to the State Fund to address the unfunded liability issue existing in the Old Fund. This action canceled a planned 22% rate increase. To remove any perception that the State Fund is a burden to the general fund, the State Fund shall re-pay to the general fund \$10 million in FY98 and \$10 million in FY99.

30. The primary source of State Fund revenue is earned through payments of premium by policyholders.
31. The fund balance of the New Fund was \$231.4 million as of 6/30/96. This does not reflect the dividend from the New Fund to the Old Fund of up to \$109 million declared 9/24/96.

Administrative Expenditures:

32. Current law administrative expenditures are limited in 39-71-2363(2), MCA, which states, "The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year."
33. The Legislative Audit Division performs an annual financial and compliance audit of the State Fund. This audit includes a check of compliance of the 15% administrative ratio.
34. The term 'administrative expenditures' is not clearly defined in statute. At the request of the State Fund Board of Directors the Legislative Audit Division reviewed the items currently included in administrative expenditures.
35. Current law administrative expenses for FY98 are projected to be \$12,805,934. Estimated prior year premium is \$86,729,653. This is a 14.76% administrative expense ratio.
36. Current law administrative expenses for FY99 are projected to be \$14,456,561. Estimated prior year premium is \$80,895,276. This is a 17.87% administrative expense ratio.
37. Passage and approval of the use of licensed insurance producers will add \$151,679 to FY98 administrative expenses and \$1,045,224 to FY99 administrative expenses in commissions paid.
38. Administrative expenditures will continue to be determined as under current law. They will be capped at 15% of prior year earned annual premium plus 50% of the prior year investment income. The current process includes only prior year premium.
39. Premium has declined from a high of \$182.4 million in FY94 to an estimated \$86.7 million in FY97. Approximately \$60 million of this premium decrease is attributable to rate reductions. There have been two rate reductions decreasing premium revenue by 35% over the last two years.
40. Estimated investment income is \$30,452,000 for FY97 and \$29,807,000 for FY98.
41. As of 10/1/96, State Fund caseloads per adjuster were 144 open wage loss claims per adjuster. Other state funds and Montana insurers and claim administrators are targeting 100 wage loss claims per adjuster as a standard.
42. The number of State Fund policyholders has remained stable from FY94 to present. The State Fund had 26,103 policyholders in FY94. As of 1/1/97 the State Fund has 24,990 policyholders.
43. The proposed legislation will exclude any dividend payments declared by the Board of Directors. This is not a cost of administering the State Fund.
44. Upon passage and approval of this legislation the FY98 administrative expenses are estimated to be \$12,805,934 with an administrative expense ratio of 14.77%. The FY99 administrative expenses are estimated to be \$14,456,561 with an administrative ratio of 17.87%. The FY99 excess of the 15% of the prior year premium is approximately \$2,322,000 which is less than 50% of the prior year investment income of \$14,903,500 (est. FY98 invest income - \$29,807,000 x .5).

Benefits and Claims:

45. The definition of 'dependent' for fatal injury beneficiary payment is clarified and does not impact the level of benefit payment.
46. Failure of an insurer to accept or deny a claim for compensation within 30 days of receipt of the claim does not constitute acceptance of the claim. This will assist in protecting the policyholders. Fiscal impact cannot be determined.
47. Insurers who fail to comply with the 30 day requirement (39-71-608, MCA) may be assessed a penalty by a workers' compensation court judge (39-71-2907, MCA) if the claim is determined to be compensable by the workers' compensation court. This assists in protecting claimants. Fiscal impact cannot be determined.
48. A worker who has not reached maximum healing but has been released by a treating physical and refuses the offer of employment in a modified or alternative position at equal or higher wages with the same employer is not eligible for temporary partial or temporary total disability benefits. This provides incentive to workers to accept equal wage employment; reduces claimant benefit payments; and reduces impact on employers loss experience. Fiscal impact cannot be determined.
49. A petition for hearing before a workers' compensation court must be filed within two years after the dispute arises or benefits are denied, whichever occurs first.

(Continued)

FISCAL IMPACT

<u>State Fund:</u>	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Increase Board Membership	3,600	3,600
Policyholder Services	<u>104,900</u>	<u>1,189,431</u>
Total Enterprise Fund (06)	108,500	1,193,031

Transfers:

New Fund	(73,800,000)	(10,000,000)
Old Fund	63,800,000	\$0
General Fund	10,000,000	10,000,000

Revenues:

OFLT	49,857,000	51,330,000
General Fund	10,000,000	10,000,000

Department of Labor and Industry:

Expenditures

Fraud Investigation	50,000	50,000
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Funding

Uninsured Employers' Fund (06)	50,000	50,000
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Net Impact on Fund Balance:

General Fund (01)	10,000,000	10,000,000
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Elimination of the OFLT prior to statutory repeal in FY07.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 10, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused:

Members Absent: Rep. Wes Prouse (R)

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 67; SB 41; SB 66; SB 233;
SB 309 (2/25/97)
Executive Action: SB 309; SB 66; SB 41; SB 164;
SB 61

HEARING ON SB 66

Opening Statement by Sponsor: Sen. Benedict, S. D. 30 introduced SB 66.

{Tape: 1; Side: 1; Approx. Time Count: 14.2; Comments: None.}

Proponents' Testimony: Joyce Brown, Dept. of Administration.

EXHIBIT 1.

{Tape: 1; Side: 1; Approx. Time Count: 15.5; Comments: None.}

Claudia Clifford, MT Insurance Div, Dept. of Administration.

{Tape: 1; Side: 1; Approx. Time Count: 17.0; Comments: None.}

Susan Good, MT Assn. of Life Underwriters and HEAL

{Tape: 1; Side: 1; Approx. Time Count: 18.0; Comments: None.}

Phil Campbell, MEA

{Tape: 1; Side: 2; Approx. Time Count: 19.8; Comments: None.}

Ellen Feavor, Anderson, etal accountants

{Tape: 1; Side: 1; Approx. Time Count: 20.4; Comments: None.}

Bob Worthington, MMIA

{Tape: 1; Side: 1; Approx. Time Count: 21.4; Comments: None.}

Opponents' Testimony:None

Questions From Committee Members and Responses:

{Tape: 1; Side: 1; Approx. Time Count: 22.0; Comments: None.}

Closing by Sponsor: Sen. Benedict closed. Rep. Ewer to carry.

{Tape: 1; Side: 1; Approx. Time Count: 28.0; Comments: None.}

HEARING ON SB 67

Opening Statement by Sponsor: Sen. Benedict, S. D. 30 introduced the bill.

{Tape: 1; Side: 2; Approx. Time Count: .01; Comments: None.}

Proponents' Testimony:

Carl Swanson, President of State Fund. EXHIBIT 2 AND 4

{Tape: 1; Side: 2; Approx. Time Count: 3.9; Comments: None.}

Mary Jo Fox, Governor's Office

{Tape: 1; Side: 2; Approx. Time Count: 16.9; Comments: None.}

Don Allen, Coalition for Workmen's Comp. Improvements

{Tape: 1; Side: 2; Approx. Time Count: 18.2; Comments: None.}

Chris Gallus, MT Chamber of Commerce

{Tape: 1; Side: 2; Approx. Time Count: 22.7; Comments: None.}

Riley Johnson, MT Federation of Independent Businessmen.

{Tape: 1; Side: 2; Approx. Time Count: 23.5; Comments: None.}

Roger McGlenn, Industrial Insurance Agents of Montana. EXHIBIT 3

{Tape: 1; Side: 2; Approx. Time Count: 25.6; Comments: None.}

Micki Smith, Dir. Professional Insurance Agents of MT

{Tape: 2; Side: 1; Approx. Time Count: .01; Comments: None.}

Charles Brooks, MT Food Distributors and Billings Chamber of Commerce

{Tape: 2; Side: 1; Approx. Time Count: 3.5; Comments: None.}

Chuck Hunter, Dept. of Labor

{Tape: 2; Side: 1; Approx. Time Count: 4.6; Comments: None.}

Ben Havdahl, MT Motor Carriers

{Tape: 2; Side: 1; Approx. Time Count: 5.0; Comments: None.}

Keith Olson, Executive Director, MT Logging Assn.

{Tape: 2; Side: 1; Approx. Time Count: 6.2; Comments: None.}

Jacqueline Lenmark, American Ins. Assn.

{Tape: 2; Side: 1; Approx. Time Count: 7.9; Comments: None.}

George Wood, MT Self Insured Association

{Tape: 2; Side: 1; Approx. Time Count: 13.1; Comments: None.}

Bob Worthington, MMIA

{Tape: 2; Side: 1; Approx. Time Count: 14.9; Comments: None.}

Leo Ward, MT School Groups

{Tape: 2; Side: 1; Approx. Time Count: 15.; Comments: None.}

Opponents' Testimony:

Jerry Driscoll, MT Building and Contractors Trades Council

{Tape: 2; Side: 1; Approx. Time Count: 16.0; Comments: None.}

Russell Hill, MT Trial Lawyers. EXHIBIT 5.

{Tape: 2; Side: 1; Approx. Time Count: 23.3; Comments: None.}

Rep. John Cobb,

{Tape: 2; Side: 2; Approx. Time Count: .01; Comments: None.}

Don Judge, AFL-CIO

{Tape: 2; Side: 2; Approx. Time Count: 1.5; Comments: None.}

Rep. Royal Johnson, H D 10. EXHIBIT 6.

{Tape: 2; Side: 2; Approx. Time Count: 9.6; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 3; Side: 1; Approx. Time Count: 19.4; Comments: None.}

Closing by Sponsor: Sen. Benedict closed.

{Tape: 3; Side: 1; Approx. Time Count: 11.3; Comments: None.}

HEARING ON SB 233Opening Statement by Sponsor: Sen. DePratu, S. D. 40 introduced the bill.

{Tape: 3; Side: 1; Approx. Time Count: 20.9; Comments: None.}

Proponents' Testimony:

Don Waldner, School Bus Contractors. EXHIBIT 7 AND 8.

{Tape: 3; Side: 1; Approx. Time Count: 24.7; Comments: None.}

Opponents' Testimony:

Don Judge, AFL-CIO. EXHIBIT 9.

{Tape: 3; Side: 1; Approx. Time Count: 27.6; Comments: None.}

Joe Dwyer, Teamsters Union

{Tape: 3; Side: 2; Approx. Time Count: 1.2; Comments: None.}

Informational Testimony:

Denny Zeiler, Unemployment Benefits, MT Dept. of Labor

{Tape: 3; Side: 2; Approx. Time Count: 3.0; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 3; Side: 2; Approx. Time Count: 8.7; Comments: None.}

Closing by Sponsor: Sen. DePratu closed.

{Tape: 4; Side: 1; Approx. Time Count: 25.9; Comments: None.}

EXECUTIVE ACTION ON SB 61Motion: Rep. Barnett moved do concur SB 61.

{Tape: 4; Side: 2; Approx. Time Count: .01; Comments: None.}

Motion: Rep. Barnett moved to adopt Barnett amendments.
EXHIBIT 10.

{Tape: 4; Side: 2; Approx. Time Count: .5; Comments: None.}

Discussion:

{Tape: 4; Side: 2; Approx. Time Count: .9; Comments: None.}

Motion/Vote: Rep. Pavlovich makes substitute motion to Table SB 61.

{Tape: 4; Side: 2; Approx. Time Count: 4.8; Comments: None.}

Senate Bill 67

Requested by Governor Racicot. Passed the Senate 44-6.

✓ Contributions from the Montana State Fund (State Fund)

1. State Fund will transfer \$63.8 million to the Old Fund by 06/30/98 to pay Old Fund claims
2. State Fund will transfer \$20 million to the General Fund (\$10 million in FY98 and \$10 million in FY99)

✓ Does not merge the Old Fund with the New Fund

The two funds will be kept separate. State Fund will continue to manage the Old Fund claims according to current law.

✓ The old fund liability tax (OFLT) will be eliminated when State Fund's independent actuary projects the unpaid liabilities of the Old Fund are adequately funded by a combination of the OFLT and State Fund's contribution of \$63.8 million.

Adequately funded means the present value of the following:

1. Total cost of future benefits remaining to be paid
2. Cost of administration of remaining claims
3. An additional reserve amount equal to 10% of 1 and 2 above

State Fund's independent actuary will make projections of Old Fund liability. Then, based on those projections, State Fund's Board of Directors will provide a report to the Budget Director on whether the Old Fund is adequately funded, including the additional 10% reserve. When adequately funded, the Budget Director then certifies to the Department of Revenue that the OFLT can terminate.

After the OFLT ends, funds in excess of "adequate funding" in the Old Fund will be returned to the State Fund. As a contingency, if there ever is a year when the Old Fund is determined not to be adequately funded, the State Fund will return to the Old Fund any funds it received in prior years when funds were in excess of "adequate funding."

As proposed under this bill, the OFLT will likely end by 06/30/99.

EXHIBIT 2
DATE 3/10/97
SB 67

✓ Dividend authority for the State Fund will be effective in FY99

✓ State Fund's administrative expense limit will be calculated based on 15% of the prior year's premium revenue and up to one-half of the prior year's investment income, as approved by State Fund's Board of Directors. State Fund's management will present the Board of Directors' approved budget to the Legislative Finance Committee for review.

✓ The Department of Labor, on behalf of the Uninsured Employers' Fund, will use investigators and prosecutors in the workers' compensation fraud office at the Department of Justice. The Department of Justice will pursue both claim fraud in the Uninsured Employers' Fund as well as uninsured employers. The cost of investigation and prosecution will be borne by the Uninsured Employers' Fund.

Other Operational Changes

- ✓ Insurance Agents: Allows State Fund customers the option to be represented by licensed insurance agents.
- ✓ Size of Board of Directors: Increases from five to seven members, to add additional business expertise.
- ✓ Other States Coverage: Provides additional service to policyholders with multistate operations.
- ✓ Fraud Office: Provides for use of prosecution and investigation services from the Department of Justice for the Department of Labor's Uninsured Employers' Fund.

Other Features of SB 67

- ✓ Defines "dependent" of deceased worker
- ✓ Provides for statute of limitations to bring workers' compensation disputes to hearing
- ✓ Addresses Supreme Court decision regarding time to accept or deny a claim. Failure to accept or deny a claim within 30 days results in a penalty rather than acceptance of the claim.
- ✓ Terminates temporary partial benefits for refusal to accept modified work assignment
- ✓ Allows both nonresident workers and insurers to use medical providers licensed in other states.
- ✓ Revises the lifting requirements in permanent partial disability from 25 to 20 pounds, so it is consistent with the Dictionary of Occupational Titles.

Please support SB67 with your "Yes" vote.

148

Independent Insurance Agents of Montana Inc.



Montana Insurance Education Foundation Inc.
Public Risk Insurance Management Inc.



SB-67

Before the House Business and Labor Committee
March 10, 1997

EXHIBIT 3
DATE 3/10/97
SB 67

Written comments respectfully submitted by:
Roger McGlenn, Executive Director, Independent Insurance Agents'
Association of Montana phone: (406) 442-9555

The Independent Insurance Agents' Association of Montana rises in support of Senate Bill 67.

Because of all the testimony you are receiving on this bill, I will not comment on all the portions of this bill. I will limit my comments to those sections involving insurance producers, (agents). Although our association did not urge or encourage the State Compensation Insurance Fund to consider using Montana insurance agents to sell and service workers' compensation coverages provided by the State Fund, we appreciate the State Fund forming a task force that began meeting back in September of 1996, to review feasibility and benefits of possibly using Montana agents. During these task force meetings, our association came to the belief that agents can bring a value added to Montana employers, their employees and the State Compensation Insurance Fund. The benefits and services that agents can provide are well worth the compensation agents will receive as outlined in the bill's fiscal note.

Some of the benefits we believe will be provided are as follows:

- Improved service and provide a local service contact
- Local source of information and response to rate, coverage and procedural questions
- Loss control and coverage coordination to ensure as complete protection as possible and prevent gaps or overlapping coverages
- Reduce operating cost to the State Fund by reducing questions and concerns directed to State Fund staff
- There are many more examples. We believe this relationship will benefit the State Fund, employers, employees and Montana insurance agents.

We also believe that the operation of the State Fund will be improved by the possibility of including a Montana insurance producer on the board of directors. This will benefit all concerned by providing increase insurance knowledge and in-field technical experience on the Board of Directors.

We ask for a do-concur recommendation for Senate Bill 67

Senate Bill 67 Testimony - House Business and Labor

Mr. Chairman and members of the committee, for the record, I am Carl Swanson, President of the Montana State Fund. I am pleased to be here today in support of Senate Bill 67. This bill has been amended in the Senate as a result of input from interested parties including members of the House. This amended Bill meets our original goals but has strengthened the Bill.

The State Fund has made remarkable progress in the last three years:

Policyholder satisfaction

Injured Worker satisfaction

Timeliness of claim process
MCO'S

Premium and Rate Decreases of 35%

Surplus 6/96 of \$231 million

--From this \$231 million in surplus, the State Fund Board of Directors declared a dividend of \$102 million to retire the Old Fund bond debt for the State of Montana.

The Montana workers' compensation system also has stabilized and this has encouraged private carriers to return to Montana so that the workers' compensation insurance market is competitive for all carriers.

These achievements are the result of the hard work of Montana's legislators who courageously made tough decisions to allow State Fund to operate more like a private insurance company. Those decisions and continued support were essential to State Fund's success. Our employees and customers also share those achievements. Our successes are due to the hard work and support of many.

Senate Bill 67 builds on the State Fund's accomplishments and allows us to remain financially strong and continue to provide services to our policyholders and injured workers.

Through this bill we will be able to help all Montana employers and employees by bringing about an early end to the payroll tax. This is through a payment by the State Fund to the Old Fund of \$63.8 million next fiscal year. This is an additional payment out of the State Fund's surplus, however we have retained sufficient surplus to keep the State Fund financially strong. That payment in addition to the payroll tax will fully fund the outstanding Old Fund claims and is estimated to allow the payroll tax to end by June 30, 1999.

As I know you have no desire to reenact a payroll tax, the bill does not provide for a date certain for

the payroll tax to end, but instead there is a test in the bill that will only allow the tax to end when there is enough money to pay claims, the expense for administering the claims, plus 10% of those amounts. In return for the Old Fund being fully funded, the State Fund Board will be able to declare dividends to deserving policyholders by FY99, just like other insurance companies and state funds as long as financial performance warrants.

There is also a safety valve provision in the bill. If the Old Fund has additional funds beyond the adequate funding amount, the excess will return to the State Fund up to a maximum of \$63.8, but if the Old Fund should ever be less than adequately funded in a future year, the State Fund will return any funds received from the Old Fund, under this provision.

The Old Fund claims will continue to be managed by the State Fund as we have done since 1990. The State Fund has a dedicated unit of 8 adjusters and a supervisor for handling Old Fund claims which allows us to focus expertise on these claims. We handle the claims on a non-profit basis, and the allocation process is audited by the Legislative Auditor. In addition, under SB67, New Fund customers in contributing \$64.8 million to the Old Fund, now have an incentive or financial stake in the outcome and efficient handling of the Old Fund claims due to the safety valve provision mentioned above.

This bill also provides for repayment to the General Fund of \$20 million. The Old Fund received \$20 million in June of 1989, and this repayment is to remove any perception that the State Fund has been or will be a burden to the General Fund. The payment will be made in a \$10 million payment in FY98 and again in FY99.

Senate Bill 67 goes one step further than other workers' compensation bills that will cross your path this session. Senate Bill 67 allows for operational changes that will strengthen the State Fund and help take it into the next century. These include the ability for the Board of Directors to provide an operating budget that meets customers' needs and helps keep the State Fund financially solvent. Not allowing for an adequate budget will tie our hands and only return us to the problems we had in the past with stacks of unopened mail, unanswered telephone calls and the inability to contain costs by providing the type of claim management service expected by our customers.

The decreases in premiums charged to our customers will have an adverse impact on our Board's ability to set an appropriate operating budget to provide needed services to customers. In addition to the changes in the bill to allow the Board to approve an adequate operating budget, State Fund management will present the approved budget to the Legislative Finance Committee each year for review.

Other operational changes Senate Bill 67 includes are:

- Clarifying the use of insurance agents so our customers can receive service in their local communities.
- Increasing the size of the Board of Directors from five to seven members to add additional business expertise to the board.

--Provides for "Other States" coverage which allows us to assist Montana employers in obtaining coverage out of state when they have multi state operations.

---Of benefit to the workers' compensation system are provisions of the bill which allow the Uninsured Employers Fund to utilize the State Fund's Fraud Office in the Department of Justice. The Uninsured Fund will bear its own costs of this fraud effort.

Senate Bill 67 also includes changes to the Workers' Compensation Act that strengthen the act in a number of areas and are addressed on the blue handout. This is not a benefit reform bill.

The Governor and the State Fund Board of Directors support this bill. I urge a "Do Pass" on Senate Bill 67.

Directors:

Wade Dahood
Director Emeritus
Elizabeth A. Best
Randall Bishop
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Victor R. Halverson, Jr.
Gene R. Jarussi
Micheal F. Lamb
Peter M. Meloy
James P. Molloy
John M. Morrison
Gregory S. Munro
David R. Paoli

Montana Trial Lawyers ASSOCIATION

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Officers:

Gene R. Jarussi
President
John M. Morrison
President-Elect
Michael D. Cok
Vice President
Patricia O. Cotter
Secretary-Treasurer
William A. Rossbach
Governor
David R. Paoli
Governor

March 10, 1997

EXHIBIT 5
DATE 3/10/97
SB 67

Rep. Bruce Simon, Chair
House Business and Labor Committee
Room 104, Capitol Station
Helena, MT 59620

RE: SB 67

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's support for two deleted sections of Senate Bill 67 (second reading) and opposition to several other provisions of the bill which remain.

Benefit enhancements. In a bill which contemplates paying more than \$1 million in new insurance-agent commissions in FY 1999 and ~~authorizing the State Fund to make more than \$35 million in bookkeeping "adjustments" that year to evade current limits on administrative expenses,~~ MTLA believes that injured workers deserve the rehabilitation benefits deleted on pages 18-19 (totalling only \$62,102 statewide) and the permanent partial disability benefits deleted at page 16, lines 20-21 (totalling only \$791,793 statewide) of the bill.

Insurer acceptance or denial of claim. Section 11 of SB 67 (page 15, lines 21-24) need not give insurance companies carte blanche to stonewall injured workers. The first sentence of subsection (5) adequately accomplishes the intent of this section to address the Montana Supreme Court's holding that failure to accept or deny a claim within 30 days constitutes ~~denial~~ acceptance.

But the second sentence of this subsection does much more: it encourages insurance companies to delay their investigations and decisions regarding liability for work-related injuries with little fear of penalties. Since the only disincentive to delay

under 39-71-2907 is a 20 percent penalty on the benefits "unreasonably" withheld, an insurance company which denies disability benefits to an injured worker for three months would be subject to a maximum penalty of about \$912 (20 percent of \$380/week). Meanwhile, such a delay will cause enormous financial hardship, even bankruptcy, for the injured worker.

MTLA suggests that this second sentence of subsection (5) be amended to provide that the insurer can extend the 30-day time period without accepting or denying the claim simply by beginning to pay conditional benefits:

"However, an insurer who fails to accept or deny a claim within 30 days must begin paying benefits from the date of claim until it accepts or denies the claim, and if it fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 and 39-71-611 if a claim is determined to be compensable by the workers' compensation court."

This amendment would also subject an unreasonable delay to more substantial disincentives, including attorney fees and costs.

Finally, MTLA opposes Section 32 of SB 67 which would, under the rubric of procedural amendments, unconstitutionally apply the substantive amendments regarding acceptance/denial retroactively to March 27, 1973.

State Fund administrative expenses. MTLA sees little advantage and much disadvantage to injured workers in relaxing current statutory limits on administrative expenses for a State Fund strong enough to lead the benefit-cutting charge for employers and other insurers, yet not strong enough to defend its own recommendations in SB 67 for common-sense benefit enhancements. As the accompanying fact sheet demonstrates, the State Fund's administrative expenses--even under current law--have been rising dramatically *in hard dollars* at the same time its business has declined precipitously.

Again, thank you for this opportunity to express MTLA's opinions on SB 67. Please contact me if I can provide additional information or assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "Russell B. Hill". The signature is fluid and cursive, with the first name "Russell" being more prominent and the last name "Hill" following in a similar style.

Russell B. Hill
Executive Director

PAYING MORE FOR LESS

● The State Fund's "unallocated claim adjustment expenses" (not ratios related to premiums) have almost doubled in just three years, at the same time its business has shrunk:

<u>Fiscal Year</u>	<u>Fiscal Year Paid Loss</u>	<u>Paid ULAE</u>	<u>ULAE Percent</u>
7/1/94-95	\$100,008,060	\$6,312,225	6.3%
7/1/95-96	\$92,774,861	\$9,578,583	10.3%
7/1/96-97	\$93,350,000	\$9,728,339	10.4%

● The State Fund's "allocated claims adjustment expenses" (not ratios related to premiums) have more than doubled in just three years, at the same time its business has shrunk:

<u>Fiscal Year</u>	<u>Fiscal Year Paid Loss</u>	<u>Paid ALAE</u>	<u>ALAE Percent</u>
7/1/93-94	\$103,766,420	\$578,000	0.6%
7/1/94-95	\$100,008,060	\$590,000	0.6%
7/1/95-96	\$92,774,861	\$932,034	1.0%
7/1/96-97	\$93,350,000	\$1,419,050	1.5%

● The State Fund's overhead expenses (not ratios) have increased by more than half in just four years, at the same time its business has shrunk:

<u>Fiscal Year</u>	<u>Overhead Expenses</u>
7/1/93-94	\$5,288,528
7/1/94-95	\$7,689,893
7/1/95-96	\$6,007,710
7/1/96-97	\$8,251,450

● The State Fund's loss adjustment expenses (not ratios) increased a whopping 80 percent last year to \$713,000, compared to \$396,000 in the previous year. Likewise, operating expenses (again, not ratios) increased 25 percent last year to \$12.5 million, compared to \$10 million the previous year.

Meanwhile, "New Fund" premiums were declining 25 percent and paid benefits were declining 8 percent. Still:

● Operating profits and total return on net worth for insurers writing workers compensation coverage in Montana have far exceeded the national average since 1991:

<u>Operating Profits</u>			<u>Total Return on Net Worth</u>	
	<u>Montana</u>	<u>National Avg.</u>	<u>Montana</u>	<u>National Avg.</u>
1994:	22.5%	13.1%	30.5%	14.4%
1993:	16.0%	9.6%	26.7%	13.4%
1992:	23.2%	3.2%	34.7%	8.6%
1991:	36.1%	-0.3%	37.5%	4.9%

EXHIBIT 6
DATE 3/10/97
SB 67

Amendments to Senate Bill No. 67
Third Reading Copy

Requested by Representative Johnson
For the House Committee of Business and Labor

Prepared by Eddy McClure
February 26, 1997

1. Title, line 9.
Following: "~~FOR~~"
Insert: "ELIMINATING THE AUTHORITY OF THE STATE FUND TO
ADMINISTER OR PAY CLAIMS FOR INJURIES FROM ACCIDENTS
OCCURRING ON OR BEFORE JULY 1, 1990, EXCEPT PURSUANT TO A
CONTRACT AUTHORIZED BY THE LEGISLATIVE FINANCE COMMITTEE;"
2. Page 2, lines 17 through 21.
Strike: lines 17 through 21 in their entirety
3. Page 3, line 5.
Following: "SHALL"
Insert: ", no later than June 30, 1998,"
4. Page 3, line 15.
Following: the first "FUND"
Insert: "by the fiscal year ending June 30, 1999,"
5. Page 8, line 18.
Following: "(2)"
Insert: "For claims relating to injuries resulting from accidents
occurring on or after July 1, 1990,"
Strike: "ADMINISTER"
Insert: "administer"
6. Page 21, line 1.
Following: "functions"
Insert: "to administer and pay claims for injuries resulting from
accidents occurring on or after July 1, 1990"
7. Page 22, line 7.
Following: line 6
Insert: "(11) enter into a contract authorized by the
legislative finance committee, after consultation with the
legislative auditor and the budget director, to administer
and pay claims for injuries resulting from accidents that
occurred on or before July 1, 1990;"
Renummer: subsequent subsection
8. Page 23, line 26.
Following: "fund"
Insert: "-- contract required for administration or payment of
claims for accidents occurring on or before July 1, 1990"
9. Page 24.

Following: line 7

Insert: "(3) The state fund may not administer or pay claims for injuries resulting from accidents that occurred on or before July 1, 1990, unless authorized pursuant to a contract entered into under 39-71-2316."

10. Page 26, lines 28 through 30.

Following: "occurred" on line 28

Strike: "before July 1, 1990, and"

Following: "1990"

Strike: "-- spending limit"

Following: "(1)"

Strike: "remainder of line 28 through "1990." on line 30

11. Page 27, lines 6 and 7

Strike: line 6 through "that" on line 7

12. Page 27, line 10.

Following: first "that"

Strike: line 10 through second "that"

13. Page 27, lines 12 and 13.

Following: "(3)"

Strike: remainder of line 12 through "1990" on line 13

Insert: "The state fund may not administer or pay claims for injuries resulting from accidents that occurred on or before July 1, 1990, unless authorized pursuant to a contract entered into under 39-71-2316"

14. Page 33, line 24 through page 34, line 11.

Following: "(1)"

Strike: remainder of line 24 through "2007" on page 34, line 11

Insert: "On July 1, 1998, the state fund may only pay claims for injuries resulting from accidents that occurred on or before July 1, 1990, pursuant to a contract authorized under 39-71-2316"

15. Page 34, line 12.

Strike: "(3)"

Insert: "(2)"

Renumber: subsequent subsections

16. Page 34, line 17.

Strike: "(7)(E)"

Insert: "(6)(e)"

17. Page 35, line 19.

Following: "CLAIMS"

Insert: "pursuant to a contract authorized under 39-71-2316"

18. Page 35, line 21.

Strike: "(7)(B)(I) AND (7)(B)(II)"

Insert: "(6)(b)(i) and (6)(b)(ii)"

19. Page 36, line 7.

Strike: "(5)"
Insert: "(4)"

20. Page 36, line 13.
Strike: "(7)(B)"
Insert: "(6)(b)"

21. Page 36, line 21.
Strike: "(7)(H)"
Insert: "(6)(h)"

22. Page 38, line 27.
Strike: "23,"

23. Page 38, line 29.
Strike: "Section"
Insert: "Sections"
Following: "15"
Insert: "and 23"
Strike: "is"
Insert: "are"

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/10/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	X		
Paul Sliter Vice Chairman	X		X
Bob Pavlovich, Vice Chairman	X		
Joe Barnett	X		
Rod Bitney	X		
Sylvia Bookout	X		
Charles Devaney	X		
David Ewer	X		
Kim Gillan	X		
Billie Krenzler	X		
Bob Lawson	X		
Rod Marshall	X		
Gay Ann Masolo	X		
Wes Prouse			
Carolyn Squires	X		
Jay Stovall	X		
Cliff Trexler	X		
Joe Tropila	X		
Carley Tuss	X		

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Res + Labor

COMMITTEE

BILL NO. SB 67
41

DATE _____

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Chapman, Brooks	Billings Chamber	487/67		✓
George Wedd	MT Self Insur Assn	41/67		✓
Roger McGlen	ITAM	SB 67		✓
Riley Johnson	NFIB	SB 67		✓
CARL SWANSON	STATE FUND	SB 67		✓
Jacqueline Denmark	Am. Ins. Ass'n	41/67		✓
HEITH OLSON	MT. Logging Assn.	67		✓
Ben Hovdahl	MT Motor Carriers Ass	67		✓
Don Innell	mt Building Trades	67	X	
Nancy Butler	State Fund	SB 41		✓
Roy Johnson	HD 10		X	
Don Allen	CWCST	67		✓
CHRIS J. GALLUS	MT CHAMBER	67		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

DATE _____ COMMITTEE _____ BILL NO. SB 67
 SPONSOR(S) _____ SB 41

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
M Susan Good	MALU & HEAL MT	66		XX
Arden Myke	RAM			✓
Steve Twierowicz	MT Auto Dealers	67		✓
Don Judge	MT STATE AFL-CIO	SB 67	X	
Nikki Smith	PIA of Montana	67		X
CHUCK HUNTER	D.O.L.I.	67 71		X X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE SIMON, on March 14, 1997, at 8:00 AM, in Room 104.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Paul Sliter, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Joe Barnett (R)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Charles R. Devaney (R)
Rep. David Ewer (D)
Rep. Kim Gillan (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Rod Marshall (R)
Rep. Gay Ann Masolo (R)
Rep. Wes Prouse (R)
Rep. Carolyn M. Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Joe Tropila (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Stephen Maly, Legislative Services Division
Pati O'Reilly, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 116; SB 34; SB 193; SB 148;
(2/25/97) HB 598 (3/6/97)
Executive Action: SB 148; SB 34; SB 116; SB 67;
HB 150; HB 305

EXECUTIVE ACTION ON SB 148

Motion/Vote: Rep. Pavlovich moved do concur SB 148. Motion carried unanimously.

{Tape: 3; Side: 2; Approx. Time Count: 17.2; Comments: None.}

EXECUTIVE ACTION ON SB 34

Motion/Vote: Rep. Masolo moved do concur SB 34. Motion carried unanimously.

{Tape: 3; Side: 2; Approx. Time Count: 18.8; Comments: None.}

EXECUTIVE ACTION ON SB 116

Motion/Vote: Rep. Krenzler moved do concur SB 116. Motion carried unanimously.

{Tape: 3; Side: 2; Approx. Time Count: 19.0; Comments: None.}

EXECUTIVE ACTION ON SB 67

Motion: Rep. Sliter moved do concur SB 67.

{Tape: 3; Side: 2; Approx. Time Count: 20.3; Comments: None.}

Motion: Rep. Bookout moved to adopt Bookout amendment.

{Tape: 3; Side: 2; Approx. Time Count: 20.8; Comments: None.}

Discussion: {Tape: 3; Side: 2; Approx. Time Count: 21.0; Comments: None.}

Vote: Motion failed roll call vote 9-10.

{Tape: 4; Side: 1; Approx. Time Count: 4.8; Comments: None.}

Motion/Vote: Rep. Ewer moved to adopt Ewer amendments.

Motion carried roll call vote 15-4.

{Tape: 4; Side: 1; Approx. Time Count: 13.0; Comments: None.}

Motion/Vote: Rep. Tropila moved to adopt Johnson amendments.

Motion carried roll call vote 11-8.

{Tape: 4; Side: 1; Approx. Time Count: 15.0; Comments: None.}

Motion: Rep. Devaney moved do concur SB 67 as amended.

{Tape: 4; Side: 1; Approx. Time Count: 18.9; Comments: None.}

Discussion: {Tape: 4; Side: 1; Approx. Time Count: 19.2; Comments: None.}

Vote: Motion carried roll call vote 13-6.

{Tape: 4; Side: 2; Approx. Time Count: 1.0; Comments: None.}



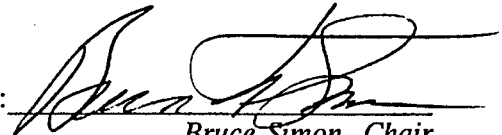
HOUSE STANDING COMMITTEE REPORT

March 14, 1997

Page 1 of 5

Mr. Speaker: We, the committee on Business and Labor report that Senate Bill 67 (third reading copy -- blue) be concurred in as amended.

Signed:


Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Mercer

1. Title, page 1, line 9.

Following: "FOR"

Insert: "ELIMINATING THE AUTHORITY OF THE STATE FUND TO
ADMINISTER OR PAY CLAIMS FOR INJURIES FROM ACCIDENTS
OCCURRING ON OR BEFORE JULY 1, 1990, EXCEPT PURSUANT TO A
CONTRACT AUTHORIZED BY THE LEGISLATIVE FINANCE COMMITTEE;"

2. Title, page 1, line 22.

Following: "BENEFITS"

Insert: "INCREASING ACCESS TO REHABILITATION BENEFITS;"

3. Title, page 2, line 10.

Following: "~~39-71-1006,~~"

Insert: "39-71-1006,"

4. Page 2, lines 17 through 21:

Strike: lines 17 through 21 in their entirety

5. Page 3, line 5.

Following: "SHALL"

Insert: ", no later than June 30, 1998,"

6. Page 3, line 15.

Following: the first "FUND"

Insert: "by June 30, 1999,"

Committee Vote:

Yes 13, No 6.

3/14
ump

561537SC.Hdh

163

March 14, 1997

Page 2 of 5

7. Page 8, line 18.

Following: "(2)"

Strike: "ADMINISTER"

Insert: "For claims relating to injuries resulting from accidents occurring on or after July 1, 1990, "administer"

8. Page 19.

Following: line 13

Insert: "**Section 14.** Section 39-71-1006, MCA, is amended to read:

"**39-71-1006. Rehabilitation benefits.** (1) A disabled worker as defined in 39-71-1011 is eligible for rehabilitation benefits if:

(a) the worker has an actual wage loss or a whole person impairment rating of 15% or greater as a result of the injury;

(b) a rehabilitation provider, as designated by the insurer, certifies that the injured worker has reasonable vocational goals and reasonable reemployment opportunity and, . . . If eligible because of an impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation, and.

(c) a rehabilitation plan agreed upon by the injured worker and the insurer is filed with the department. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning and completion date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of public health and human services to use the funds.

(2) After filing the rehabilitation plan with the department, the disabled worker is entitled to receive biweekly compensation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

(3) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

(4) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.

561537SC.Hdh

164

(5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

(6) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Renumber: subsequent sections

9. Page 21, line 1.

Following: "functions"

Insert: "to administer and pay claims for injuries resulting from accidents occurring on or after July 1, 1990"

10. Page 22, line 7.

Following: line 6

Insert: "(11) enter into a contract authorized by the legislative finance committee, after consultation with the legislative auditor and the budget director, to administer and pay claims for injuries resulting from accidents that occurred on or before July 1, 1990;"

Renumber: subsequent subsection

11. Page 23, line 26.

Following: "fund"

Insert: "-- contract required for administration or payment of claims for accidents occurring on or before July 1, 1990"

12. Page 24.

Following: line 7

Insert: "(3) The state fund may not administer or pay claims for injuries resulting from accidents that occurred on or before July 1, 1990, unless authorized pursuant to a contract entered into under 39-71-2316."

13. Page 26, lines 28 through 30.

Following: "occurred" on line 28

Strike: "before July 1, 1990, and"

Following: "1990"

Strike: "-- spending limit"

Following: "(1)"

Strike: remainder of line 28 through "1990." on line 30

14. Page 27, lines 6 and 7

Strike: line 6 through "that" on line 7

15. Page 27, line 10.

Following: first "that"
Strike: line 10 through second "that"

16. Page 27, lines 12 and 13.
Following: "(3)"
Strike: remainder of line 12 through "1990" on line 13
Insert: "The state fund may not administer or pay claims for
injuries resulting from accidents that occurred on or before
July 1, 1990, unless authorized pursuant to a contract
entered into under 39-71-2316"

17. Page 33, line 24 through page 34, line 11.
Following: "(1)"
Strike: remainder of line 24 through "2007" on page 34, line 11
Insert: "On July 1, 1998, the state fund may only pay claims for
injuries resulting from accidents that occurred on or before
July 1, 1990, pursuant to a contract authorized under 39-71-
2316"

18. Page 34, line 12.
Strike: "(3)"
Insert: "(2)"
Renumber: subsequent subsections

19. Page 34, line 17.
Strike: "(7) (E)"
Insert: "(6) (e)"

20. Page 35, line 19.
Following: "CLAIMS"
Insert: "pursuant to a contract authorized under 39-71-2316"

21. Page 35, line 21.
Strike: "(7) (B) (I) AND (7) (B) (II)"
Insert: "(6) (b) (i) and (6) (b) (ii)"

22. Page 36, line 7.
Strike: "(5)"
Insert: "(4)"

23. Page 36, line 13.
Strike: "(7) (B)"
Insert: "(6) (b)"

24. Page 36, line 21.
Strike: "(7) (H)"
Insert: "(6) (h)"

25. Page 38, line 22 and 23.

Following: "9," on line 22

Strike: remainder of line 22 through "30(1)" on line 23

Insert: "15, 17, 18, 20, 21, 23, 25 through 28, 30, and 31(1)"

26. Page 38, lines 24 and 25 and 26.

Following: "12"

Strike: "13,"

Insert: "through 14"

27. Page 38, line 27.

Strike: "18, 21, 23, AND 30(2)"

Insert: "19, 22, and 31(2)"

28. Page 38, line 28.

Strike: "27"

Insert: "28"

29. Page 38, line 29.

Strike: "Section" through "15"

Insert: "Sections 16 and 24"

Strike: "is"

Insert: "are"

30. Page 38, line 30.

Strike: "31, 32, 34"

Insert: "32, 33, 35"

31. Page 39, line 3.

Strike: "17"

Insert: "18"

32. Page 39, line 4.

Strike: "22"

Insert: "23"

Strike: "27"

Insert: "28"

33. Page 39, line 5.

Strike: "14"

Insert: "15"

-END-

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 3/14/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	✓		
Paul Sliter Vice Chairman	✓		
Bob Pavlovich, Vice Chairman	✓		
Joe Barnett	✓		
Rod Bitney	✓		
Sylvia Bookout	✓		
Charles Devaney	✓		
David Ewer	✓		
Kim Gillan	✓		
Billie Krenzler	✓		
Bob Lawson	✓		
Rod Marshall	✓		
Gay Ann Masolo	✓		
Wes Prouse	✓		
Carolyn Squires	✓		
Jay Stovall	✓		
Cliff Trexler	✓		
Joe Tropila	✓		
Carley Tuss	✓		

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/14/97 BILL NO. SB67 NUMBER 1MOTION: Postpone amendment to appoint

9-10

NAME	AYE	NO
Bruce Simon, Chairman		X
Paul Sliter, Vice Chairman		X
Bob Pavlovich, Vice Chairman	X	
Joe Barnett		X
Rod Bitney		X
Sylvia Bookout	X	
Charles Devaney		X
David Ewer	X	
Kim Gillan	X	
Billie Krenzler	X	
Bob Lawson	X	
Rod Marshall		X
Gay Ann Masolo		X
Wes Prouse		X
Carolyn Squires	X	
Jay Stovall		X
Cliff Trexler		X
Joe Troplia	X	
Carley Tuss	X	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/14/97 BILL NO. SB67 NUMBER 1MOTION: Ewer Amendment to SB6715-4

NAME	AYE	NO
Bruce Simon, Chairman	X	
Paul Sliter, Vice Chairman		X
Bob Pavlovich, Vice Chairman	X	
Joe Barnett		X
Rod Bitney		X
Sylvia Bookout	X	
Charles Devaney	X	
David Ewer	X	
Kim Gillan	X	
Billie Krenzler	X	
Bob Lawson		X
Rod Marshall	X	
Gay Ann Masolo	X	
Wes Prouse	X	
Carolyn Squires	X	
Jay Stovall	X	
Cliff Trexler	X	
Joe Troplia	X	
Carley Tuss	X	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/14/97 BILL NO. SB 67 NUMBER 11-8MOTION: Propose motion to adopt
Johnson amendments

NAME	AYE	NO
Bruce Simon, Chairman		X
Paul Sliter, Vice Chairman		X
Bob Pavlovich, Vice Chairman	X	
Joe Barnett	X	
Rod Bitney		X
Sylvia Bookout	X	
Charles Devaney		X
David Ewer	X	
Kim Gillan	X	
Billie Krenzler	X	
Bob Lawson		X
Rod Marshall		X
Gay Ann Masolo	X	
Wes Prouse		X
Carolyn Squires	X	
Jay Stovall	X	
Cliff Trexler		X
Joe Troplia	X	
Carley Tuss	X	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

BUSINESS AND LABOR COMMITTEE

DATE 3/14/97BILL NO. SB67NUMBER 1

MOTION:

Wellsbury do concur SB67 as amended
13-6

NAME	AYE	NO
Bruce Simon, Chairman	X	
Paul Sliter, Vice Chairman	X	
Bob Pavlovich, Vice Chairman		X
Joe Barnett	X	
Rod Bitney	X	
Sylvia Bookout	X	
Charles Devaney	X	
David Ewer	X	
Kim Gillan		X
Billie Krenzler		X
Bob Lawson	X	
Rod Marshall	X	
Gay Ann Masolo	X	
Wes Prouse	X	
Carolyn Squires		X
Jay Stovall	X	
Cliff Trexler	X	
Joe Troplia		X
Carley Tuss		X

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0067, second reading, second house as amended

DESCRIPTION OF PROPOSED LEGISLATION:

This bill generally revises workers' compensation laws; increases the Board to seven members and one member may be an insurance producer; provides for the transfer of \$63.8 million to the Old Fund account; eliminates the authority of the State Fund to administer or pay claims for injuries from accidents occurring on or before July 1, 1990, except pursuant to a contract authorized by the Legislative Finance Committee; terminates the old fund liability tax on employers, employees, and self-employed persons when the Old Fund is adequately funded; removes the limitation on the payment of dividends by the New Fund; provides that the amounts in excess of adequate funding of the Old Fund are returned to the New Fund account and that any shortfall in adequate funding is returned to the Old Fund in an amount equal to that returned to the New Fund; clarifies the definition of 'dependent' for fatal injury beneficiary claims; provides that an insurer's failure to meet time limits is not acceptance of claim; provides that a worker who has not reached maximum healing, but who is released by a treating physician and refuses an offer of employment in alternative position at equal or higher wages, is not eligible for temporary partial or temporary total disability benefits; increases access to rehabilitation benefits; provides for fraud investigation and prosecution for the uninsured employers' fund by the Department of Justice; defines 'treating physician' to include those physicians licensed in other states, including psychologist and functional capacity evaluations and providing for examinations by licensed providers in another state when examinations are requested by the insurer; adjusts the lifting requirement for light activity for permanent partial disability benefits; authorizes 'other states' coverage; clarifies use of licensed insurance producers; requires State Fund to repay \$20 million to the general fund; provides for up to one-half of the prior year's investment income for administrative expenditures and for review by the Legislative Finance Committee; limits time for resolving benefits dispute; requires State Fund, the Department of Justice, and the Department of Labor and Industry to file a joint biennial budget for the Workers' Compensation Fraud Office; provides for transfer of balance of workers' compensation bond repayment account to State Fund on June 30, 1997.

ASSUMPTIONS:

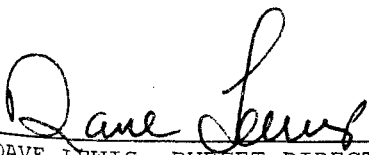
Increasing Board Size:

1. Current Board has five members and will add two additional members increasing Board membership to seven.
2. Membership of the increased Board will be structured as follows: at least four members who must represent State Fund policyholders; at least four members who shall represent private, for-profit enterprises; and one of the members who may be a licensed insurance producer.
3. The State Fund Board of Directors meets twelve times a year.
4. Each Board member is entitled to a \$50 per diem and reimbursement for travel, lodging, and meals, at state rates. This will increase annual expenditures for Board members by \$3,600 for each year of the biennium.

Workers' Compensation Fraud:

5. The State Fund, the Department of Justice, and the Department of Labor and Industry, shall submit to the legislature one biennial budget request for the Workers' Compensation Fraud Office.
6. The proposed budget for staff and related expenses will be based on the needs of the State Fund and the Department of Labor and Industry, on behalf of the uninsured employers' fund, for investigating and prosecuting workers' compensation insurance fraud.

(Continued)

 3.26.97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

STEVE BENEDICT, PRIMARY SPONSOR DATE

Fiscal Note for SB0067, second reading,
second house as amended

Am SB 67 #3

7. The Workers' Compensation Fraud Office will staff one or more investigators and one or more prosecutors.
8. All funding for the Workers' Compensation Fraud Office will be provided by the State Fund as generated through premium income or the uninsured employers' fund. Funding for the uninsured employers' fund comes from an assessment charged to all Plan 1, 2, and 3 insurers. The Department of Labor and Industry estimates that it will require a \$50,000 per year appropriation to implement for the uninsured employers' fund.
9. Licensed insurance producers are required to notify the State Fund's Fraud Detection and Prevention Unit of alleged fraud within 60 days.

Policyholder Services:

10. The State Fund may contract with licensed resident insurance producers.
11. Insurance producers will be local ombudsmen for policyholders and provide enhanced services.
12. These policyholder services are normally provided by State Fund insurers. The State Fund will use the existing expertise of licensed insurance producers in the private sector.
13. Insurance producers will receive commissions on policies placed with the State Fund. It is estimated that commission expenditures for FY98 will be \$151,679 and FY99 will be \$1,045,224.
14. The net impact for FY98 is \$104,900 and includes: \$3,033,573 in new premiums produced by agents; less \$2,602,122 benefit payments and loss adjustment expense on that business; and less \$326,551 for commissions, agent incentive plan, State Fund expenses, and agent training costs.
15. The net impact for FY99 is \$1,189,431 and includes: \$20,904,475 in new and renewal premiums produced by agents; less \$17,931,334 benefit payments and loss adjustment expense on that business; and less \$1,783,710 for commissions, agent incentive plan, State Fund expenses, and agent training costs.
16. Other states coverage is a new service the State Fund may offer to policyholders. The State Fund may enter into agreements with workers' compensation insurers, insurance associations, or insurance producers to coordinate workers' compensation coverage in other states to Montana-domiciled employers insured with the State Fund. The fiscal impact is neutral.

Elimination of Old Fund Liability Tax (OFLT):

17. The State Fund shall, no later than June 30, 1998, transfer \$63.8 million to the account created to pay claims for injuries resulting from accidents that occurred before July 1, 1990.
18. The Old Fund will continue to receive OFLT collections until claims liabilities are projected to be 'adequately funded'.
19. 'Adequately funded' is defined as (A) the present value of the total cost of future benefits remaining to be paid plus (B) the cost of administering the claims plus an amount equal to 10% of A and B. The current law requires Old Fund reserves to be maintained on an undiscounted basis.
20. The projections to determine if the Old Fund is 'adequately funded' will take place twice a year, by October 15th and by February 28th. The projections will continue until the Old Fund is certified by the Budget Director to be 'adequately funded'.
21. If after the October 15th projection the Old Fund is projected to be 'adequately funded' the OFLT will be terminated as of January 1. If after the February 28th projection the Old Fund is projected to be 'adequately funded' the OFLT will be terminated as of July 1.
22. If the OFLT terminates on July 1, the OFLT imposed upon self-employed is an amount equal to 0.1% for the full calendar year.
23. If after the OFLT is terminated and it is determined the Old Fund has an excess of funding the excess amount will be transferred to the New Fund.
24. If, in any fiscal year after the OFLT is terminated, the Old Fund is not 'adequately funded' any amount transferred to the New Fund from the Old Fund must be returned to the Old Fund.
25. An independent actuary engaged by the State Fund shall project the unpaid claims of the Old Fund each year until the claims are paid.

(Continued)

26. The State Fund Board will have the authority to declare dividends, payable to policyholders, if there is an excess of assets over liabilities in the New Fund and actuarially determined reserves have been set aside. This will no longer be contingent upon the termination of the OFLT.
27. The OFLT revenues, as projected by State Fund staff, are anticipated to be \$123.9 million between 7/1/96 and 12/31/98. FY97 - \$48,427,000; FY98 - \$49,857,000; FY99 - \$51,330,000.
28. The fund balance of the Old Fund was (\$355.1 million) as of 6/30/96. This does not reflect the dividend from the New Fund to the Old Fund of up to \$109 million declared 9/24/96.

\$20 Million Repayment To General Fund:

29. During the June 1989 Special Session \$20 million of general fund was appropriated to the State Fund to address the unfunded liability issue existing in the Old Fund. This action canceled a planned 22% rate increase. To remove any perception that the State Fund is a burden to the general fund, the State Fund shall re-pay to the general fund \$10 million in FY98 and \$10 million in FY99.
30. The primary source of State Fund revenue is earned through payments of premium by policyholders.
31. The fund balance of the New Fund was \$231.4 million as of 6/30/96. This does not reflect the dividend from the New Fund to the Old Fund of up to \$109 million declared 9/24/96.

Administrative Expenditures:

32. Current law administrative expenditures are limited in 39-71-2363(2), MCA, which states, "The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year."
33. The Legislative Audit Division performs an annual financial and compliance audit of the State Fund. This audit includes a check of compliance of the 15% administrative ratio.
34. The term "administrative expenditures" is not clearly defined in statute. At the request of the State Fund Board of Directors the Legislative Audit Division reviewed the items currently included in administrative expenditures.
35. Current law administrative expenses for FY98 are projected to be \$12,805,934. Estimated prior year premium is \$86,729,653. This is a 14.76% administrative expense ratio.
36. Current law administrative expenses for FY99 are projected to be \$14,456,561. Estimated prior year premium is \$80,895,276. This is a 17.87% administrative expense ratio.
37. Passage and approval of the use of licensed insurance producers will add \$151,679 to FY98 administrative expenses and \$1,045,224 to FY99 administrative expenses in commissions paid.
38. Administrative expenditures will continue to be determined as under current law. They will be capped at 15% of prior year earned annual premium plus 50% of the prior year investment income. The current process includes only prior year premium.
39. Premium has declined from a high of \$182.4 million in FY94 to an estimated \$86.7 million in FY97. Approximately \$60 million of this premium decrease is attributable to rate reductions. There have been two rate reductions decreasing premium revenue by 35% over the last two years.
40. Estimated investment income is \$30,452,000 for FY97 and \$29,807,000 for FY98.
41. As of 10/1/96, State Fund caseloads per adjuster were 144 open wage loss claims per adjuster. Other state funds and Montana insurers and claim administrators are targeting 100 wage loss claims per adjuster as a standard.
42. The number of State Fund policyholders has remained stable from FY94 to present. The State Fund had 26,103 policyholders in FY94. As of 1/1/97 the State Fund has 24,990 policyholders.
43. The proposed legislation will exclude any dividend payments declared by the Board of Directors. This is not a cost of administering the State Fund.
44. Upon passage and approval of this legislation the FY98 administrative expenses are estimated to be \$12,805,934 with an administrative expense ratio of 14.77%. The FY99 administrative expenses are estimated to be \$14,456,561 with an administrative ratio of 17.87%. The FY99 excess of the 15% of the prior year premium is approximately \$2,322,000 which is less than 50% of the prior year investment income of \$14,903,500 (est. FY98 invest income - \$29,807,000 x .5).

Benefits and Claims:

45. The definition of "dependent" for fatal injury beneficiary payment is clarified and does not impact the level of benefit payment.
46. Failure of an insurer to accept or deny a claim for compensation within 30 days of receipt of the claim does not constitute acceptance of the claim. This will assist in protecting the policyholders. Fiscal impact cannot be determined.
47. Insurers who fail to comply with the 30 day requirement (39-71-608, MCA) may be assessed a penalty by a workers' compensation court judge (39-71-2907, MCA) if the claim is determined to be compensable by the workers' compensation court. This assists in protecting claimants. Fiscal impact cannot be determined.
48. A worker who has not reached maximum healing but has been released by a treating physician and refuses the offer of employment in a modified or alternative position at equal or higher wages with the same employer is not eligible for temporary partial or temporary total disability benefits. This provides incentive to workers to accept equal wage employment; reduces claimant benefit payments; and reduces impact on employers loss experience. Fiscal impact cannot be determined.
49. The proposed legislation provides for workers with whole person impairment ratings of 15% or more to be eligible for rehabilitation benefits. NCCI was requested to estimate the cost of increasing access to rehabilitation benefits. NCCI determined that the impacts on the total system would be +0.2%. That equates approximately \$180,000 of additional incurred losses in an accident year. The estimated increase in fiscal 1998 benefits paid is \$17,602 and an increase in fiscal year 1999 benefits paid of \$62,102.
50. A petition for hearing before a workers' compensation court must be filed within two years after the dispute arises or benefits are denied, whichever occurs first.

Provision to Contract Function to Administer and Pay Old Fund Claims:*

51. The proposed legislation eliminates authority for State Fund to administer or pay claims of the Old Fund, unless the State Fund awards a contract authorized by the Legislative Finance Committee, effective 7/1/98.
52. The proposed legislation eliminates current law authorizing the State Fund to administer Old Fund claims, limited to \$3 million. In its place, the State Fund and the Legislative Finance Committee are to negotiate a contract to manage the Old Fund claims effective 7/1/98.
53. The State Fund allocates the cost of managing the claims which does not include a profit. The cost of managing the Old Fund includes claim adjusting, issuing warrants, actuarial analysis, accounting and financial reporting, computer costs and customer services costs. The State Fund also incurs legal costs in Old Fund premium related issues.
54. The Legislative Audit Division continues to review the process used by the State Fund to allocate administrative costs to the Old Fund annually.
55. The proposed legislation does not appear to authorize an RFP and bid process to other than the State Fund.
56. There is a fiscal impact for the additional cost to the State Fund to negotiate and prepare a contract with the Legislative Finance Committee. That cost can not be determined.
57. There may be a fiscal impact to the Legislative Audit Division and the Office of Budget and Program Planning to negotiate and prepare a contract with the State Fund on behalf of the Legislative Finance Committee. That cost can not be determined. The costs for these functions would come from the Old Fund account used to pay claims of the Old Fund.

*It appears the provisions related to assumptions 51-57 were amended or deleted on the House Floor March 25. These House Floor amendments do not appear to change the fiscal impact.

(Continued)

FISCAL IMPACT

state Fund:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Increase Board Membership	3,600	3,600
Benefits and Claims	17,602	62,102
Policyholder Services	<u>104,900</u>	<u>1,189,431</u>
Total Enterprise Fund (06)	126,102	1,255,133

Transfers:

New Fund	(73,800,000)	(10,000,000)
Old Fund	63,800,000	\$0
General Fund	10,000,000	10,000,000

Revenues:

OFLT	49,857,000	51,330,000
General Fund	10,000,000	10,000,000

Department of Labor and Industry:

Expenditures

Fraud Investigation	50,000	50,000
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Funding

Uninsured Employers' Fund (06)	50,000	50,000
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Net Impact on Fund Balance:

General Fund (01)	10,000,000	10,000,000
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Elimination of the OFLT prior to statutory repeal in FY07.
2. Stabilization of workers' compensation insurance environment in Montana.

TECHNICAL NOTES:

1. In the title of the bill, page 1, line 10, eliminate the words "on or". Reference should only be to claims occurring before July 1, 1990.
2. Section 6 deletes the definition of "administer and pay" for the Old Fund claims effective 7/1/97, while Section 15 authorizing the new contracting requirement is not effective until 7/1/98; therefore, no definition for "administer and pay" for the Old Fund would exist for a year.
3. Section 23 was intended to be effective when OFLT tax terminated, and not effective 7/1/98.
4. The effective date of Section 18, which is when the Old Fund Liability Tax terminates, conflicts with the effective date on contracting out the Old Fund on 7/1/98 in Section 15. The words "on or" should be eliminated because reference should only be to claims occurring before July 1, 1990.

SENATE BILL NO. 67

INTRODUCED BY BENEDICT

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAWS; INCREASING TO SEVEN MEMBERS THE STATE COMPENSATION INSURANCE FUND BOARD AND AUTHORIZING A LICENSED INSURANCE PRODUCER MEMBER; PROVIDING FOR ~~MERGER OF THE OLD AND NEW FUND ACCOUNTS~~ THE TRANSFER OF \$63.8 MILLION TO THE OLD FUND ACCOUNT; PROVIDING A CONTINGENCY FOR ~~ELIMINATING THE AUTHORITY OF THE STATE FUND TO ADMINISTER OR PAY CLAIMS FOR INJURIES FROM ACCIDENTS OCCURRING ON OR BEFORE JULY 1, 1990, EXCEPT PURSUANT TO A CONTRACT AUTHORIZED BY THE LEGISLATIVE FINANCE COMMITTEE;~~ TERMINATING THE OLD FUND LIABILITY TAX ON EMPLOYERS, EMPLOYEES, AND SELF-EMPLOYED PERSONS EFFECTIVE JANUARY 1, 1999; ~~REQUIRING ASSUMPTION OF THE OLD FUND CLAIM LIABILITY BY THE STATE FUND WHEN THE OLD FUND IS ADEQUATELY FUNDED;~~ REMOVING THE LIMITATION ON THE PAYMENT OF DIVIDENDS BY THE NEW FUND; PROVIDING THAT THE AMOUNTS IN EXCESS OF ADEQUATE FUNDING OF THE OLD FUND ARE RETURNED TO THE NEW FUND ACCOUNT AND THAT ANY SHORTFALL IN ADEQUATE FUNDING IS RETURNED TO THE OLD FUND IN AN AMOUNT EQUAL TO THAT RETURNED TO THE NEW FUND; CLARIFYING THE DEFINITION OF "DEPENDENT" FOR FATAL INJURY BENEFICIARY CLAIMS; PROVIDING THAT AN INSURER'S FAILURE TO MEET TIME LIMITATIONS IS NOT AN ACCEPTANCE OF THE CLAIM; ~~INCREASING COMPENSATION FOR PERMANENT PARTIAL DISABILITY;~~ PROVIDING THAT A WORKER WHO HAS NOT REACHED MAXIMUM HEALING BUT WHO IS RELEASED BY A TREATING PHYSICIAN AND REFUSES THE OFFER OF EMPLOYMENT IN A MODIFIED OR ALTERNATIVE POSITION AT AN EQUIVALENT OR HIGHER WAGE IS NOT ELIGIBLE FOR TEMPORARY PARTIAL OR TEMPORARY TOTAL DISABILITY BENEFITS; ~~INCREASING ACCESS TO REHABILITATION BENEFITS~~ INCREASING ACCESS TO REHABILITATION BENEFITS; PROVIDING FOR FRAUD INVESTIGATION AND PROSECUTION FOR THE UNINSURED EMPLOYERS' FUND BY THE DEPARTMENT OF JUSTICE; DEFINING "TREATING PHYSICIAN" TO INCLUDE THOSE PHYSICIANS LICENSED IN OTHER STATES; INCLUDING PSYCHOLOGISTS AND FUNCTIONAL CAPACITY EVALUATIONS AND PROVIDING FOR EXAMINATIONS BY LICENSED PROVIDERS IN ANOTHER STATE WHEN EXAMINATIONS ARE REQUESTED BY THE INSURER; ADJUSTING THE LIFTING REQUIREMENT FOR LIGHT ACTIVITY FOR

1 PERMANENT PARTIAL DISABILITY BENEFITS; AUTHORIZING THE STATE FUND TO PROVIDE "OTHER
 2 STATES" COVERAGE; CLARIFYING THE STATE FUND'S USE OF LICENSED INSURANCE PRODUCERS;
 3 REQUIRING THAT THE STATE FUND REPAY \$20 MILLION TO THE GENERAL FUND; CLARIFYING THE
 4 TYPES OF ADMINISTRATIVE EXPENDITURES USED IN DETERMINING THE STATE FUND'S 15 PERCENT
 5 LIMITATION PROVIDING FOR UP TO ONE-HALF OF THE PRIOR YEAR'S INVESTMENT INCOME FOR
 6 ADMINISTRATIVE EXPENDITURES AND FOR REVIEW BY THE LEGISLATIVE FINANCE COMMITTEE;
 7 LIMITING THE TIME FOR BRINGING AN ACTION TO RESOLVE A BENEFITS DISPUTE; REQUIRING THE
 8 STATE FUND AND, THE DEPARTMENT OF JUSTICE, AND THE DEPARTMENT OF LABOR AND INDUSTRY
 9 TO FILE A JOINT BIENNIAL BUDGET FOR THE WORKERS' COMPENSATION FRAUD OFFICE; PROVIDING
 10 FOR TRANSFER OF THE BALANCE IN THE WORKERS' COMPENSATION BOND REPAYMENT ACCOUNT
 11 ON JUNE 30, 1997, TO THE STATE FUND; AMENDING SECTIONS 2-15-1019, 2-15-2015, 15-30-207,
 12 17-7-502, 33-1-1205, 33-16-1024, 39-71-116, 39-71-318, 39-71-406, 39-71-502, 39-71-605,
 13 39-71-606, 39-71-703, 39-71-712, 39-71-1006, 39-71-1006, 39-71-2316, 39-71-2320, 39-71-2321,
 14 39-71-2322, 39-71-2323, 39-71-2327, 39-71-2361, 39-71-2351, 39-71-2352, 39-71-2363, 39-71-2501,
 15 39-71-2503, 39-71-2505, AND 39-71-2905, MCA; REPEALING SECTIONS 39-71-2351, 39-71-2352,
 16 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2504, 39-71-2506, AND
 17 39-71-2506, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A CONTINGENT
 18 TERMINATION DATE DATES."

19
 20 ~~WHEREAS, it is the intent of the state compensation insurance fund to assist all Montanans by~~
 21 ~~eliminating REDUCING the unfunded liability of the old fund, terminating the old fund liability tax as early~~
 22 ~~as January 1, 1999, but no later than January 1, 2000 WHEN THE OLD FUND IS ADEQUATELY FUNDED,~~
 23 ~~WHICH IS CURRENTLY ESTIMATED TO OCCUR AS EARLY AS JUNE 30, 1999, providing for the payment~~
 24 ~~of dividends to policyholders, and maintaining a viable state compensation insurance fund; and~~

25 WHEREAS, IT IS THE INTENT OF THE STATE COMPENSATION INSURANCE FUND TO ASSIST ALL
 26 MONTANANS BY REDUCING THE UNFUNDED LIABILITY OF THE OLD FUND, TERMINATING THE OLD
 27 FUND LIABILITY TAX WHEN THE OLD FUND IS ADEQUATELY FUNDED, WHICH IS CURRENTLY
 28 ESTIMATED TO OCCUR AS EARLY AS JUNE 30, 1999, PROVIDING FOR THE PAYMENT OF DIVIDENDS
 29 TO POLICYHOLDERS, AND MAINTAINING A VIABLE STATE COMPENSATION INSURANCE FUND; AND

30 WHEREAS, there was an unfunded liability of \$355 million as of June 30, 1996, for claims for

workers' compensation injuries occurring before July 1, 1990, in the old fund, which included \$129 million in outstanding bond debt; and

WHEREAS, the old fund is funded with the old fund liability tax paid by employers, employees, and self-employed persons, generating as much as \$50 million each year; and

WHEREAS, the surplus of \$231 in the new fund as of June 30, 1996, allowed the Board of Directors of the State Fund to declare a dividend of up to \$109 million to retire the outstanding bond debt in the old fund; and

WHEREAS, the unfunded liability in the old fund will be an estimated \$200 million deficit by June 30, 1997, and the surplus or the excess of assets above the reserves that are set aside to meet the claim liability in the new fund will be an estimated \$127 million by June 30, 1997; and

WHEREAS, current state law requires the State Fund to use dividends to be applied first to old fund outstanding liability rather than paying dividends directly to policyholders, ~~and merger of the old fund and new fund claims will allow new fund surplus to fully fund the~~ THE STATE FUND SHALL, NO LATER THAN JUNE 30, 1998, TRANSFER \$63.8 MILLION TO THE OLD FUND ACCOUNT TO PAY old fund claims, ~~allowing~~ TO ALLOW direct payment of dividends to policyholders ~~after elimination of the old fund liability tax;~~ and

~~WHEREAS, combining the old and new funds into a combined State Fund and eliminating the old fund liability tax by the end of the 1998 calendar year could save taxpayers an estimated \$69 million in old fund liability tax payments; and~~

WHEREAS, the \$20 million appropriation received by the State Fund from the general fund during the June 1989 Special Session partially addressed the unfunded liability issue existing at that time in the old fund and canceled a planned 22% rate increase; and

WHEREAS, the State Fund now agrees to repay the \$20 million appropriation TO THE GENERAL FUND BY JUNE 30, 1999, IN LIEU OF TRANSFERRING ADDITIONAL FUNDS TO THE OLD FUND ACCOUNT to provide the general fund with additional revenue and to remove any perception that the State Fund remains a burden on the general fund; and

WHEREAS, because decreases in premium rates totaled 35% in fiscal years 1996 and 1997 and legislative changes in benefit levels have resulted in the return of private carriers, the 15% limitation on administration expenses as a percent of the prior year's premium will significantly impact the State Fund's ability to provide service to policyholders and their injured workers; and

WHEREAS, the State Fund seeks to improve the level of services provided to customers without increasing existing State Fund staffing levels by working with private sector-licensed insurance producers; and

WHEREAS, in response to Haag v. Montana Schools Group Insurance Authority, 274 M 109, 906 P.2d 693 (1995), in which the Montana Supreme Court ruled that an insurer's failure to comply with the time limitations for ~~filing~~ ACCEPTING OR DENYING a workers' compensation claim constituted acceptance of the claim, current law needs to be clarified to provide that the failure to comply with ~~filing~~ THE time limitations does not constitute acceptance of the claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1019, MCA, is amended to read:

"2-15-1019. Board of directors of the state compensation insurance fund. (1) There is a board of directors of the state compensation insurance fund.

(2) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may employ its own staff.

(3) The board may provide for its own office space and the office space of the state fund.

(4) The board consists of ~~five~~ seven members appointed by the governor. The executive director of the state fund is an ex officio nonvoting member.

(5) At least ~~three~~ four of the ~~five~~ seven members ~~shall~~ must represent state fund policyholders and may be employees of state fund policyholders. At least ~~three~~ four members of the board shall represent private, for-profit enterprises. One of the seven members may be a licensed insurance producer. A member of the board may not:

(a) except for the licensed insurance producer member, represent or be an employee of an insurance company that is licensed to transact workers' compensation insurance under compensation plan No. 2; or

(b) be an employee of a self-insured employer under compensation plan No. 1.

(6) A member is appointed for a term of 4 years. The terms of board members must be staggered. A member of the board may serve no more than two 4-year terms. A member shall hold office until a successor is appointed and qualified.

(7) The members must be appointed and compensated in the same manner as members of a quasi-judicial board as provided in 2-15-124, except that the requirement that at least one member be an attorney does not apply."

Section 2. Section 2-15-2015, MCA, is amended to read:

"2-15-2015. Workers' compensation fraud office. There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation insurance fund OR THE DEPARTMENT OF LABOR AND INDUSTRY ON BEHALF OF THE UNINSURED EMPLOYERS' FUND. The office is under the supervision and control of the attorney general and consists of:

(1) ~~four persons~~ one or more investigators qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapters 71 and 72, at the request of the state compensation insurance fund OR THE DEPARTMENT OF LABOR AND INDUSTRY ON BEHALF OF THE UNINSURED EMPLOYERS' FUND; and

(2) ~~one person~~ one or more attorneys licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, chapters 71 and 72. The ~~attorney~~ attorneys may also assist county attorneys in prosecuting violations of Title 39, chapters 71 and 72, without charge to the county.

(3) The state compensation insurance fund, THE DEPARTMENT OF LABOR AND INDUSTRY, and the department of justice shall jointly submit to the legislature for approval a ONE proposed biennial budget for the workers' compensation fraud office. The proposed budget for staffing and related expenses must be based upon the needs of the state compensation insurance fund AND THE DEPARTMENT OF LABOR AND INDUSTRY ON BEHALF OF THE UNINSURED EMPLOYERS' FUND for investigating and prosecuting workers' compensation fraud."

Section 3. ~~Section 15-30-207, MCA, is amended to read:~~

~~"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such the information as that the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof of the year and showing the total amount of the federal income tax deducted and withheld from such the wages and the total amount of the tax~~

1 ~~deducted and withhold therefrom under the provisions of 15-30-201 through 15-30-209 and 39-71-2503,~~

2 ~~(2) The annual statement filed by an employer with respect to the wage payments reported~~
3 ~~constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents,~~
4 ~~and no additional information return is not required with respect to such the wage payments.~~

5 ~~(3) In addition to any other penalty provided by law, the failure of an employer to furnish a~~
6 ~~statement as required by subsection (1) subjects the employer to a penalty of \$5 for each failure, provided~~
7 ~~that, however, the minimum penalty for failure to file the statements required on or before February 28 of~~
8 ~~each year shall be is \$50. This penalty may be abated by the department upon a showing of good cause~~
9 ~~by the employer. The penalty may be collected in the same manner as are other tax debts."~~

11 **Section 3.** Section 17-7-502, MCA, is amended to read:

12 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
13 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
14 without the need for a biennial legislative appropriation or budget amendment.

15 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
16 with both of the following provisions:

17 (a) The law containing the statutory authority must be listed in subsection (3).

18 (b) The law or portion of the law making a statutory appropriation must specifically state that a
19 statutory appropriation is made as provided in this section.

20 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
21 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
22 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
23 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
24 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
25 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
26 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
27 39-71-907; 39-71-2321; ~~39-71-2504~~; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
28 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
29 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301;
30 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 4. Section 33-1-1205, MCA, is amended to read:

"33-1-1205. Duties of authorized insurers, adjusters, administrators, consultants, and producers -- notice exception. (1) Each insurer, independent adjuster, independent administrator, independent consultant, and independent producer shall cooperate fully with the commissioner with respect to the provisions of this part.

(2) ~~An~~ Except as provided in subsection (4), an insurer, an officer, employee, or producer of the insurer, an independent adjuster, an independent administrator, an independent consultant, or an independent producer who has reason to believe that an insurance fraud has been or is being committed shall provide notice of the alleged insurance fraud to the commissioner within 60 days.

(3) Notice to the commissioner by an insurer who has reason to believe that an insurance fraud has been committed in connection with an insurance claim, application, or policy tolls any applicable time period, for the commissioner, in any applicable insurance statute, related insurance regulation, or applicable sections of the criminal code and tolls any time period arising under 33-18-232 or 33-18-242 regarding unfair claims settlement practices.

(4) Notice of an alleged insurance fraud involving an insurance claim or application submitted to the state compensation insurance fund or a policy issued by the state compensation insurance fund must be made within 60 days to the fraud detection and prevention unit established pursuant to 39-71-211."

Section 5. Section 33-16-1024, MCA, is amended to read:

"33-16-1024. Plan No. 3 membership in licensed workers' compensation advisory organization

1 -- **reporting requirements.** (1) The plan No. 3 insurer under Title 39, chapter 71, part 23, is required to be
2 a member of a licensed workers' compensation advisory organization or a licensed workers' compensation
3 rating organization under Title 33, chapter 16, part 4.

4 (2) If the plan No. 3 insurer is not a member of the workers' compensation advisory organization
5 designated under 33-16-1023, then, subject to the deviations from the uniform statistical plan, uniform
6 classification system, and uniform experience rating plan that may be approved by the board of directors
7 of the plan No. 3 insurer as provided in 39-71-2316~~(5)(1)(e)~~, the insurer shall:

8 (a) record and report its workers' compensation experience to the designated advisory organization
9 as required in the uniform statistical plan of the designated workers' compensation advisory organization
10 approved by the commissioner, the uniform classification system, and the uniform experience rating plan
11 that have been filed by the designated advisory organization with and approved by the commissioner; and

12 (b) use the forms and adhere to the rules that the designated advisory organization develops and
13 files with the commissioner under 33-16-1023."
14

15 **Section 6.** Section 39-71-116, MCA, is amended to read;

16 **"39-71-116. Definitions.** Unless the context otherwise requires, words and phrases used in this
17 chapter have the following meanings:

18 (1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the
19 worker reaches maximum healing are less than the actual wages the worker received at the time of the
20 injury.

21 ~~(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation~~
22 ~~Act and the Occupational Disease Act of Montana necessary to:~~

23 ~~(a) investigation, review, and settlement of claims;~~

24 ~~(b) payment of benefits;~~

25 ~~(c) setting of reserves;~~

26 ~~(d) furnishing of services and facilities; and~~

27 ~~(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.~~

28 ~~(2) "ADMINISTER FOR CLAIMS RELATING TO INJURIES RESULTING FROM ACCIDENTS~~
29 ~~OCCURRING ON OR AFTER JULY 1, 1990, "ADMINISTER ADMINISTER AND PAY" INCLUDES ALL~~
30 ~~ACTIONS BY THE STATE FUND UNDER THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL~~

1 DISEASE ACT OF MONTANA NECESSARY TO:

2 (A) INVESTIGATION, REVIEW, AND SETTLEMENT OF CLAIMS;

3 (B) PAYMENT OF BENEFITS;

4 (C) SETTING OF RESERVES;

5 (D) FURNISHING OF SERVICES AND FACILITIES; AND

6 (E) USE OF ACTUARIAL, AUDIT, ACCOUNTING, VOCATIONAL REHABILITATION, AND LEGAL
7 SERVICES.

8 ~~(3)(2)(3)~~ "Aid or sustenance" means any public or private subsidy made to provide a means of
9 support, maintenance, or subsistence for the recipient.

10 ~~(4)(3)(4)~~ "Average weekly wage" means the mean weekly earnings of all employees under covered
11 employment, as defined and established annually by the department. It is established at the nearest whole
12 dollar number and must be adopted by the department prior to July 1 of each year.

13 ~~(5)(4)(5)~~ "Beneficiary" means:

14 (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time
15 of injury;

16 (b) an unmarried child under 18 years of age;

17 (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or
18 is enrolled in an accredited apprenticeship program;

19 (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the
20 decedent for support at the time of injury;

21 (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the
22 time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

23 (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the
24 decedent for support at the time of the injury but only until the age of 18 years and only when a
25 beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

26 ~~(6)(5)(6)~~ "Casual employment" means employment not in the usual course of the trade, business,
27 profession, or occupation of the employer.

28 ~~(7)(6)(7)~~ "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted
29 prior to the injury.

30 ~~(8)(7)(8)~~ "Construction industry" means the major group of general contractors and operative

1 builders, heavy construction (other than building construction) contractors, and special trade contractors,
2 listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does
3 not include office workers, design professionals, salespersons, estimators, or any other related employment
4 that is not directly involved on a regular basis in the provision of physical labor at a construction or
5 renovation site.

6 ~~(9)(8)(9)~~ "Days" means calendar days, unless otherwise specified.

7 ~~(10)(9)(10)~~ "Department" means the department of labor and industry.

8 ~~(11)(10)(11)~~ "Fiscal year" means the period of time between July 1 and the succeeding June 30.

9 ~~(12)(11)(12)~~ "Household or domestic employment" means employment of persons other than
10 members of the household for the purpose of tending to the aid and comfort of the employer or members
11 of the employer's family, including but not limited to housecleaning and yard work, but does not include
12 employment beyond the scope of normal household or domestic duties, such as home health care or
13 domiciliary care.

14 ~~(13)(12)(13)~~ "Insurer" means an employer bound by compensation plan No. 1, an insurance
15 company transacting business under compensation plan No. 2, or the state fund under compensation plan
16 No. 3.

17 ~~(14)(13)(14)~~ "Invalid" means one who is physically or mentally incapacitated.

18 ~~(15)(14)(15)~~ "Limited liability company" is as defined in 35-8-102.

19 ~~(16)(15)(16)~~ "Maintenance care" means treatment designed to provide the optimum state of health
20 while minimizing recurrence of the clinical status.

21 ~~(17)(16)(17)~~ "Medical stability", "maximum healing", or "maximum medical healing" means a point
22 in the healing process when further material improvement would not be reasonably expected from primary
23 medical treatment.

24 ~~(18)(17)(18)~~ "Objective medical findings" means medical evidence, including range of motion,
25 atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

26 ~~(19)(18)(19)~~ "Order" means any decision, rule, direction, requirement, or standard of the
27 department or any other determination arrived at or decision made by the department.

28 ~~(20)(19)(20)~~ "Palliative care" means treatment designed to reduce or ease symptoms without curing
29 the underlying cause of the symptoms.

30 ~~(21)(20)(21)~~ "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average

1 annual payroll of the employer for the preceding calendar year or, if the employer has not operated a
2 sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the
3 current year. However, an estimate may be made by the department for any employer starting in business
4 if average payrolls are not available. This estimate must be adjusted by additional payment by the employer
5 or refund by the department, as the case may actually be, on December 31 of the current year. An
6 employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by
7 an employer.

8 ~~(22)(21)(22)~~ "Permanent partial disability" means a physical condition in which a worker, after
9 reaching maximum medical healing:

10 (a) has a permanent impairment established by objective medical findings;

11 (b) is able to return to work in some capacity but the permanent impairment impairs the worker's
12 ability to work; and

13 (c) has an actual wage loss as a result of the injury.

14 ~~(23)(22)(23)~~ "Permanent total disability" means a physical condition resulting from injury as defined
15 in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a
16 reasonable prospect of physically performing regular employment. Regular employment means work on a
17 recurring basis performed for remuneration in a trade, business, profession, or other occupation in this
18 state. Lack of immediate job openings is not a factor to be considered in determining if a worker is
19 permanently totally disabled.

20 ~~(24)(23)(24)~~ The "plant of the employer" includes the place of business of a third person while the
21 employer has access to or control over the place of business for the purpose of carrying on the employer's
22 usual trade, business, or occupation.

23 ~~(25)(24)(25)~~ "Primary medical services" means treatment prescribed by a treating physician, for
24 conditions resulting from the injury, necessary for achieving medical stability.

25 ~~(26)(25)(26)~~ "Public corporation" means the state or any county, municipal corporation, school
26 district, city, city under a commission form of government or special charter, town, or village.

27 ~~(27)(26)(27)~~ "Reasonably safe place to work" means that the place of employment has been made
28 as free from danger to the life or safety of the employee as the nature of the employment will reasonably
29 permit.

30 ~~(28)(27)(28)~~ "Reasonably safe tools and appliances" are tools and appliances that are adapted to

1 and that are reasonably safe for use for the particular purpose for which they are furnished.

2 ~~(29)(28)(29)~~ (a) "Secondary medical services" means those medical services or appliances that are
3 considered not medically necessary for medical stability. The services and appliances include but are not
4 limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs
5 designed to address disability and not impairment, or equipment offered by individuals, clinics, groups,
6 hospitals, or rehabilitation facilities.

7 (b) (i) As used in this subsection ~~(29)(28)(29)~~, "disability" means a condition in which a worker's
8 ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an
9 injury. The restrictions may be combined with factors, such as the worker's age, education, work history,
10 and other factors that affect the worker's ability to engage in gainful employment.

11 (ii) Disability does not mean a purely medical condition.

12 ~~(30)(29)(30)~~ "Sole proprietor" means the person who has the exclusive legal right or title to or
13 ownership of a business enterprise.

14 ~~(31)(30)(31)~~ "Temporary partial disability" means a physical condition resulting from an injury, as
15 defined in 39-71-119, in which a worker, prior to maximum healing:

16 (a) is temporarily unable to return to the position held at the time of injury because of a medically
17 determined physical restriction;

18 (b) returns to work in a modified or alternative employment; and

19 (c) suffers a partial wage loss.

20 ~~(32)(31)(32)~~ "Temporary service contractor" means a person, firm, association, partnership, limited
21 liability company, or corporation conducting business that hires its own employees and assigns them to
22 clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
23 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
24 assignments and projects.

25 ~~(33)(32)(33)~~ "Temporary total disability" means a physical condition resulting from an injury, as
26 defined in this chapter, that results in total loss of wages and exists until the injured worker reaches
27 maximum medical healing.

28 ~~(34)(33)(34)~~ "Temporary worker" means a worker whose services are furnished to another on a
29 part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement
30 a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special

1 assignments and projects.

2 ~~(35)(34)(35)~~ "Treating physician" means a person who is primarily responsible for the treatment of
3 a worker's compensable injury and is:

4 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
5 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

6 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

7 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
8 there is not a physician, as defined in subsection ~~(35)(a) (34)(a)~~ (35)(A), in the area where the physician
9 assistant-certified is located;

10 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; ~~or~~

11 (e) a dentist licensed by the state of Montana under Title 37, chapter 4; OR

12 (F) FOR A CLAIMANT RESIDING OUT OF STATE OR UPON APPROVAL OF THE INSURER, A
13 TREATING PHYSICIAN DEFINED IN SUBSECTIONS (35)(A) THROUGH (35)(E) WHO IS LICENSED OR
14 CERTIFIED IN ANOTHER STATE.

15 ~~(36)(35)(36)~~ "Year", unless otherwise specified, means calendar year."
16

17 **Section 7.** Section 39-71-318, MCA, is amended to read:

18 **"39-71-318. Hearings -- rules of evidence -- conduct -- filing limits -- exception.** (1) The statutory
19 and common-law rules of evidence do not apply to a hearing before the department under this chapter.
20 A petition for a hearing before the department must be filed within 2 years after the dispute arises or after
21 benefits are denied, whichever occurs first.

22 (2) Except for a hearing before the workers' compensation court, a hearing under this chapter may
23 be conducted by telephone or by videoconference."
24

25 **Section 8.** Section 39-71-406, MCA, is amended to read:

26 **"39-71-406. Deduction from wages of any part of premium a misdemeanor.** It is unlawful for the
27 employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages
28 or earnings of the employer's workers, and the making or attempt to make any ~~such~~ premium deduction
29 is a misdemeanor. ~~The workers' compensation old fund liability tax under 39-71-2503 is not a premium for~~
30 ~~the purpose of this section."~~

1 **SECTION 9. SECTION 39-71-502, MCA, IS AMENDED TO READ:**

2 **"39-71-502. Creation and purpose of uninsured employers' fund. (1)** There is created an
3 uninsured employers' fund. The purpose of the fund is to pay;

4 (a) to an injured employee of an uninsured employer the same benefits the employee would have
5 received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as
6 provided in 39-71-503(2); and

7 (b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015.

8 (2) The department may refer to the workers' compensation fraud office established in 2-15-2015
9 cases involving:

10 (a) false or fraudulent claims for benefits; or

11 (b) criminal violations of 45-7-501."

12
13 **SECTION 10. SECTION 39-71-605, MCA, IS AMENDED TO READ:**

14 **"39-71-605. Examination of employee by physician -- effect of refusal to submit to examination**
15 **-- report and testimony of physician -- cost. (1) (a)** Whenever in case of injury the right to compensation
16 under this chapter would exist in favor of any employee, the employee shall, upon the written request of
17 the insurer, submit from time to time to examination by a physician, psychologist, or panel ~~of physicians,~~
18 ~~who that~~ must be provided and paid for by the insurer, and shall likewise submit to examination from time
19 to time by any physician, psychologist, or panel ~~of physicians~~ selected by the department or as ordered by
20 the workers' compensation judge.

21 (b) The request or order for an examination must fix a time and place for the examination, with
22 regard for the employee's convenience, physical condition, and ability to attend at the time and place that
23 is as close to the employee's residence as is practical. An examination that is conducted by a physician,
24 psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled
25 to have a physician present at any examination. If the employee, after written request, fails or refuses to
26 submit to the examination or in any way obstructs the examination, the employee's right to compensation
27 must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel
28 ~~of physicians~~ employed by the insurer or the department who makes or is present at any examination may
29 be required to testify as to the results of the examination.

30 (2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes

of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel ~~of physicians~~ within the state or elsewhere ~~who have that has~~ had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel ~~of physicians~~ making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel ~~of physicians~~ for the examination.

(3) As used in this section, a panel of physicians includes a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.

~~(3)(5)~~ This section does not apply to impairment evaluations provided for in 39-71-711."

Section 11. Section 39-71-606, MCA, is amended to read:

"39-71-606. Insurer to accept or deny claim within thirty days of receipt -- notice of benefits and entitlements to claimants -- notice of denial -- notice of reopening -- notice to employer. (1) ~~Every~~ Each insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation SIGNED BY THE CLAIMANT OR THE CLAIMANT'S REPRESENTATIVE, either accept or deny the claim, and, if denied, shall inform the claimant and the department in writing of ~~such~~ the denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer that it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

(5) Failure of an insurer to comply with the time limitations required in this section does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court."

Section 12. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (4) by 350 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (3) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of ~~more than \$2~~ \$2.01 to \$4 ~~MORE THAN \$2~~ an hour as a result of the industrial injury, 20%; ~~if a worker has an actual wage loss of \$4.01 to \$6 an hour as a result of the industrial injury, 30%; if a~~

~~worker has an actual wage loss of more than \$6 an hour as a result of the industrial injury, 40%.~~ Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to ~~25~~ 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

Section 13. Section 39-71-712, MCA, is amended to read:

"39-71-712. Temporary partial disability benefits. (1) If, prior to maximum healing, an injured

1 worker has a physical restriction and is approved to return to a modified or alternative employment that the
2 worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a
3 temporary work restriction, the worker qualifies for temporary partial disability benefits.

4 (2) An insurer's liability for temporary partial disability must be the difference between the injured
5 worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a
6 week, and the actual weekly wages earned during the period that the claimant is temporarily partially
7 disabled, not to exceed the injured worker's temporary total disability benefit rate.

8 (3) Temporary partial disability benefits are limited to a total of 26 weeks. The insurer may extend
9 the period of temporary partial disability payments.

10 (4) A worker is not eligible for temporary partial disability benefits or temporary total disability
11 benefits if:

12 (a) the worker has been released by the treating physician to return to a modified or alternative
13 position that the individual is able and qualified to perform with the same employer;

14 (b) the wages payable in the modified or alternative position, when combined with the temporary
15 partial disability benefits, would result in an equivalent or higher wage than the worker received at the time
16 of injury; and

17 (c) the worker refuses to accept the modified or alternative position. A worker requalifies for
18 temporary total disability benefits if the modified or alternative position is no longer available to the worker
19 and the worker continues to be temporarily totally disabled as defined in 39-71-116.

20 (5) Temporary partial disability may not be credited against any permanent partial disability award
21 or settlement under 39-71-703."

22
23 ~~Section 13. Section 39-71-1006, MCA, is amended to read:~~

24 ~~"39-71-1006. Rehabilitation benefits. (1) A disabled worker, as defined in 39-71-1011, is eligible~~
25 ~~for rehabilitation benefits if:~~

26 ~~(a) the worker has an actual wage loss or a whole person impairment rating of 15% or greater as~~
27 ~~a result of the injury;~~

28 ~~(b) a rehabilitation provider, as designated by the insurer, certifies that the injured worker has~~
29 ~~reasonable vocational goals and reasonable reemployment opportunity and. If eligible because of an~~
30 ~~impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the~~

~~worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation; and,~~

~~(c) a rehabilitation plan agreed upon by the injured worker and the insurer is filed with the department. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning and completion date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of public health and human services to use the funds.~~

~~(2) After filing the rehabilitation plan with the department, the disabled worker is entitled to receive biweekly compensation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed upon rehabilitation plan. Benefits under this section are not subject to the lump sum provisions of 39-71-741.~~

~~(3) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.~~

~~(4) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.~~

~~(5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.~~

~~(6) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."~~

SECTION 14. SECTION 39-71-1006, MCA, IS AMENDED TO READ:

"39-71-1006. Rehabilitation benefits. (1) A disabled worker as defined in 39-71-1011 is eligible for rehabilitation benefits if:

(a) (i) the worker has an actual wage loss or MEETS THE DEFINITION OF A DISABLED WORKER AS PROVIDED IN 39-71-1011; OR

(ii) THE WORKER HAS, AS A RESULT OF THE WORK-RELATED INJURY, a whole person

1 impairment rating of 15% or greater as a result of the injury, AS ESTABLISHED BY OBJECTIVE MEDICAL
2 FINDINGS, AND HAS NO ACTUAL WAGE LOSS;

3 (b) a rehabilitation provider, as designated by the insurer, certifies that the injured worker has
4 reasonable vocational goals and reasonable reemployment opportunity ~~and~~. If eligible because of an
5 impairment rating of 15% or more, with rehabilitation the worker will have a reasonable increase in the
6 worker's wage compared to the wage that the worker received at the time of injury. If eligible because of
7 a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with
8 rehabilitation; ~~and~~.

9 (c) a rehabilitation plan agreed upon by the injured worker and the insurer is filed with the
10 department. The plan must take into consideration the worker's age, education, training, work history,
11 residual physical capacities, and vocational interests. The plan must specify a beginning and completion
12 date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the
13 department of public health and human services to use the funds.

14 (2) After filing the rehabilitation plan with the department, the disabled worker is entitled to receive
15 biweekly compensation benefits at the injured worker's temporary total disability rate. The benefits must
16 be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan
17 must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits
18 must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan.
19 Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

20 (3) A worker may not receive temporary total benefits and the benefits under subsection (2) during
21 the same period of time.

22 (4) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker
23 until the rehabilitation plan is completed.

24 (5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan
25 within 78 weeks of reaching maximum medical healing.

26 (6) A worker may not receive both wages and rehabilitation benefits without the written consent
27 of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of
28 the insurer is guilty of theft and may be prosecuted under 45-6-301."

29
30 **Section 15.** Section 39-71-2316, MCA, is amended to read:

1 "39-71-2316. Powers of state fund ~~assumption of pre July 1, 1990, claims~~ -- PAYMENT TO
2 ACCOUNT FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING BEFORE JULY 1,

3 1990. (1) For the purposes of carrying out its functions, the state fund may:

4 (1)(a) insure any employer for workers' compensation and occupational disease liability as the
5 coverage is required by the laws of this state and, as part of the coverage, provide related employers'
6 liability insurance upon approval of the board;

7 (2)(b) sue and be sued;

8 (3)(c) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts
9 relating to the administration of the state fund, including claims management, servicing, and payment;

10 (4)(d) collect and disburse money received;

11 (5)(e) adopt classifications and charge premiums for the classifications so that the state fund will
12 be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and
13 changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
14 chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the
15 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested
16 case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium
17 rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a
18 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the
19 classifications of employment adopted by the designated workers' compensation advisory organization, as
20 provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates.
21 Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a
22 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may
23 not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's
24 specific payroll or loss information, including but not limited to experience modification factors.

25 (6)(f) pay the amounts determined due under a policy of insurance issued by the state fund;

26 (7)(g) hire personnel;

27 (8) ~~declare dividends if there is an excess of assets over liabilities. However, dividends may not~~
28 ~~be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside,~~
29 ~~money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for~~
30 ~~claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes~~

1 ~~of that account. After all claims funded by that account have been paid, dividends may be declared and~~
2 ~~paid to insureds.~~

3 (h) upon approval of the board, contract with licensed resident insurance producers;

4 (i) upon approval of the board, enter into agreements with licensed workers' compensation
5 insurers, INSURANCE ASSOCIATIONS, OR INSURANCE PRODUCERS to provide workers' compensation
6 coverage in other states to Montana-domiciled employers insured with the state fund;

7 ~~(9)(j)~~ perform all functions and exercise all powers of a private insurance carrier that are necessary,
8 appropriate, or convenient for the administration of the state fund.

9 ~~(2) On [the effective date of this section], the state fund shall assume full liability for the~~
10 ~~administration and payment of claims for injuries resulting from accidents that occurred before July 1, 1990~~
11 THE STATE FUND SHALL, NO LATER THAN JUNE 30, 1998, TRANSFER \$63.8 MILLION TO THE
12 ACCOUNT CREATED IN 39-71-2321 TO PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT
13 OCCURRED BEFORE JULY 1, 1990."

14
15 **Section 16.** Section 39-71-2316, MCA, is amended to read:

16 **"39-71-2316. Powers of state fund.** ~~(1)~~ For the purposes of carrying out its functions ~~TO~~
17 ~~ADMINISTER AND PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS OCCURRING ON OR AFTER~~
18 ~~JULY 1, 1990~~, the state fund may:

19 ~~(1)(a)~~ (1) insure any employer for workers' compensation and occupational disease liability as the
20 coverage is required by the laws of this state and, as part of the coverage, provide related employers'
21 liability insurance upon approval of the board;

22 ~~(2)(b)~~ (2) sue and be sued;

23 ~~(3)(c)~~ (3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into
24 contracts relating to the administration of the state fund, including claims management, servicing, and
25 payment;

26 ~~(4)(d)~~ (4) collect and disburse money received;

27 ~~(5)(e)~~ (5) adopt classifications and charge premiums for the classifications so that the state fund
28 will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted
29 and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2,
30 chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the

1 rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested
2 case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium
3 rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a
4 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the
5 classifications of employment adopted by the designated workers' compensation advisory organization, as
6 provided in Title 33, chapter 16, part 10, and corresponding rates as a basis for setting its own rates.
7 Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a
8 licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may
9 not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's
10 specific payroll or loss information, including but not limited to experience modification factors.

11 ~~(6)(f)(6)~~ pay the amounts determined due under a policy of insurance issued by the state fund;

12 ~~(7)(g)(7)~~ hire personnel;

13 ~~(8)(h)(8)~~ declare dividends if there is an excess of assets over liabilities. However, dividends may
14 not be paid until adequate actuarially determined reserves are set aside. ~~If these reserves have been set~~
15 ~~aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321~~
16 ~~for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes~~
17 ~~of that account. After all claims funded by that account have been paid, dividends may be declared and~~
18 ~~paid to insureds.~~

19 ~~(i)(9)~~ upon approval of the board, contract with licensed resident insurance producers;

20 ~~(i)(10)~~ upon approval of the board, enter into agreements with licensed workers' compensation
21 ~~insurers, INSURANCE ASSOCIATIONS, OR INSURANCE PRODUCERS to provide workers' compensation~~
22 ~~coverage in other states to Montana-domiciled employers insured with the state fund;~~

23 ~~(11) ENTER INTO A CONTRACT AUTHORIZED BY THE LEGISLATIVE FINANCE COMMITTEE, AFTER~~
24 ~~CONSULTATION WITH THE LEGISLATIVE AUDITOR AND THE BUDGET DIRECTOR, TO ADMINISTER AND~~
25 ~~PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED ON OR BEFORE JULY 1,~~
26 ~~1990;~~

27 ~~(9)(k)(11)(12)(11)~~ perform all functions and exercise all powers of a private insurance carrier that
28 are necessary, appropriate, or convenient for the administration of the state fund.

29 ~~(2) On [the effective date of this section], the state fund shall assume full liability for the~~
30 ~~administration and payment of claims for injuries resulting from accidents that occurred before July 1,~~

1 1990."

2
3 **Section 17.** Section 39-71-2320, MCA, is amended to read:

4 **"39-71-2320. ~~(Temporary)~~ Property of state fund -- investment required -- exception.** All (1)
5 Except as provided in subsection (2), all premiums and other money paid to the state fund, all property and
6 securities acquired through the use of money belonging to the state fund, and all interest and dividends
7 earned upon money belonging to the state fund are the sole property of the state fund and must be used
8 exclusively for the operations and obligations of the state fund. The money collected by the state fund may
9 not be used for any other purpose. However, state fund money must be invested by the board of
10 investments provided for in 2-15-1808.

11 (2) The state fund shall pay to the general fund:

12 (a) \$10 million in the fiscal year ending June 30, 1998; and

13 (b) \$10 million in the fiscal year ending June 30, 1999.

14 ~~**39-71-2320. (Effective July 1, 1997, on occurrence of contingency) Property of state fund --**~~
15 ~~**investment required -- exception for common stock. (1) All premiums and other money paid to the state**~~
16 ~~**fund, all property and securities acquired through the use of money belonging to the state fund, and all**~~
17 ~~**interest and dividends earned upon money belonging to the state fund are the sole property of the state**~~
18 ~~**fund and must be used exclusively for the operations and obligations of the state fund. The money collected**~~
19 ~~**by the state fund may not be used for any other purpose. However, state fund money must be invested**~~
20 ~~**by the board of investments provided for in 2-15-1808. Except as provided in subsection (2), state fund**~~
21 ~~**money may be invested in common stocks of any corporation.**~~

22 ~~**(2) State fund money may be invested in common stocks of a corporation if the investment does**~~
23 ~~**not cause the book value of state fund common stock investments to exceed 15% of the book value of**~~
24 ~~**the state fund total invested assets or does not cause the book value of common stock investments in one**~~
25 ~~**corporation to exceed 2% of the book value of the state fund total invested assets on the date of purchase.**~~
26 ~~**(Effective on approval by electorate of House Bill No. 463 sec. 5, Ch. 424, L. 1995.)"**~~

27
28 **Section 18.** Section 39-71-2321, MCA, is amended to read:

29 **"39-71-2321. What to be deposited in state fund. (1) {a} All premiums, penalties, recoveries by**
30 **subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through**

use of money, and taxes collected under 39-71-2503 and 39-71-2505, AND THE INTEREST AND PENALTIES ON THE TAXES IN ACCORDANCE WITH 15-1-501 must be deposited in the state fund. ~~They must be separated into two accounts based upon whether they relate.~~ THEY MUST BE SEPARATED INTO TWO ACCOUNTS BASED UPON WHETHER THEY RELATE to ~~pay~~ claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

~~(b)(2)~~ All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

~~(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990.~~

(3) THE PROCEEDS OF BONDS ISSUED AND LOANS GIVEN TO THE STATE FUND UNDER 39-71-2354 AND 39-71-2355 MUST BE DEPOSITED IN THE ACCOUNT FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990."

Section 19. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund ~~--- CONTRACT REQUIRED FOR ADMINISTRATION OR PAYMENT OF CLAIMS FOR ACCIDENTS OCCURRING ON OR BEFORE JULY 1, 1990.~~ (1) ~~(a)~~ All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money, TAXES COLLECTED UNDER 39-71-2503 AND 39-71-2505, AND THE INTEREST AND PENALTIES ON THE TAXES IN ACCORDANCE WITH 15-1-501 must be deposited in the state fund. ~~They must be separated into two accounts based upon whether they relate.~~ THEY MUST BE SEPARATED INTO TWO ACCOUNTS BASED UPON WHETHER THEY RELATE to ~~pay~~ claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

~~(b)(2)~~ All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

~~(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990.~~

~~(3) THE STATE FUND MAY NOT ADMINISTER OR PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED ON OR BEFORE JULY 1, 1990, UNLESS AUTHORIZED PURSUANT TO A~~

202

1 ~~CONTRACT ENTERED INTO UNDER 39-71-2316."~~

3 **Section 20.** Section 39-71-2322, MCA, is amended to read:

4 "39-71-2322. **Money in state fund held in trust -- disposition of funds upon repeal of chapter --**
5 **exception.** ~~The~~ Except as provided in 39-71-2320, the money coming into the state fund must be held in
6 trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject
7 to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision,
8 distribution must be in accordance with the justice of the matter, due regard being ~~had~~ given to obligations
9 of compensation incurred and existing."

11 ~~**Section 20.** Section 39-71-2323, MCA, is amended to read:~~

12 ~~"39-71-2323. **Surplus in state fund -- payment of dividends.** Subject to the provisions of~~
13 ~~39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321~~
14 ~~for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over~~
15 ~~liabilities, including necessary reserves and a reasonable surplus, and if the excess may be refunded safely,~~
16 ~~then the state fund may declare a dividend. The rules of the state fund must prescribe the manner of~~
17 ~~payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable~~
18 ~~to them in the fund for that year. In determining the amount or proportion of the balance to which the~~
19 ~~employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and~~
20 ~~accident experience of each individual employer during the dividend year."~~

22 **Section 21.** Section 39-71-2327, MCA, is amended to read:

23 "39-71-2327. **Earnings of state fund to be credited to fund -- improper use a felony -- exception.**
24 ~~All~~ Except as provided in 39-71-2320, all earnings made by the state fund by reason of interest paid for
25 the deposit ~~thereof~~ of funds or otherwise must be credited to and become a part of the fund, and the
26 making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person
27 convicted of an offense under this section is punishable by imprisonment in the state prison for a term not
28 to exceed 2 years or a fine of not more than \$5,000, or both."

30 ~~**Section 22.** Section 39-71-2361, MCA, is amended to read:~~

~~"39-71-2361. Legislative audit of state fund. The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date."~~

SECTION 22. SECTION 39-71-2351, MCA, IS AMENDED TO READ:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

~~(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;~~

~~(b) create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.~~

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

1 **SECTION 23. SECTION 39-71-2352, MCA, IS AMENDED TO READ:**

2 "39-71-2352. Separate payment structure and sources for claims for injuries resulting from
3 accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit. (1) Premiums
4 paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and
5 pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in
6 ~~39-71-2316 and 39-71-2354~~, premiums paid to the state fund based upon wages payable on or after July
7 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on
8 or after July 1, 1990.

9 (2) The state fund shall:

10 (a) determine the cost of administering and paying claims for injuries resulting from accidents that
11 occurred before July 1, 1990, and separately determine the cost of administering and paying claims for
12 injuries resulting from accidents that occur on or after July 1, 1990;

13 (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

14 (c) fund administrative expenses and benefit payments for claims for injuries resulting from
15 accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on
16 or after July 1, 1990, separately from the sources provided by law.

17 (3) The state fund may not spend more than \$3 million a year to administer claims for injuries
18 resulting from accidents that occurred before July 1, 1990."

19
20 **SECTION 24. SECTION 39-71-2352, MCA, IS AMENDED TO READ:**

21 "39-71-2352. Separate payment structure and sources for claims for injuries resulting from
22 accidents that occurred ~~before July 1, 1990, and~~ **BEFORE JULY 1, 1990, AND** on or after July 1, 1990
23 ~~-- spending limit --~~ **SPENDING LIMIT**. (1) ~~Premiums paid to the state fund based upon wages payable before~~
24 ~~July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that~~
25 ~~occurred before July 1, 1990. Except as provided in 39-71-2316 and 39-71-2354, premiums~~ **PREMIUMS**
26 **PAID TO THE STATE FUND BASED UPON WAGES PAYABLE BEFORE JULY 1, 1990, MAY BE USED ONLY**
27 **TO ADMINISTER AND PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED**
28 **BEFORE JULY 1, 1990.** Premiums paid to the state fund based upon wages payable on or after July 1,
29 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on
30 or after July 1, 1990.

1 (2) The state fund shall:

2 (a) determine the cost of administering and paying claims for injuries resulting from accidents that
3 ~~occurred before July 1, 1990, and separately determine the cost of administering and paying claims for~~
4 ~~injuries resulting from accidents that~~ OCCURRED BEFORE JULY 1, 1990, AND SEPARATELY DETERMINE
5 THE COST OF ADMINISTERING AND PAYING CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS
6 THAT occur on or after July 1, 1990;

7 (b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

8 (c) fund administrative expenses and benefit payments for claims for injuries resulting from
9 accidents that ~~occurred before July 1, 1990, and claims for injuries resulting from accidents that~~
10 OCCURRED BEFORE JULY 1, 1990, AND CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT
11 occur on or after July 1, 1990, separately from the sources provided by law.

12 (3) ~~The state fund may not spend more than \$3 million a year to administer claims for injuries~~
13 ~~resulting from accidents that occurred before July 1, 1990~~ THE STATE FUND MAY NOT ADMINISTER OR
14 PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED ON OR BEFORE JULY 1,
15 1990, UNLESS AUTHORIZED PURSUANT TO A CONTRACT ENTERED INTO UNDER 39-71-2316 THE
16 STATE FUND MAY NOT SPEND MORE THAN \$3 MILLION A YEAR TO ADMINISTER CLAIMS FOR
17 INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990."

18
19 **Section 25.** Section 39-71-2363, MCA, is amended to read:

20 **"39-71-2363. Agency law -- submission of budget -- annual report.** (1) The state fund is subject
21 to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the
22 provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7,
23 parts 1 through 4. The state fund may use the debt collection procedures provided in Title 17, chapter 4,
24 part 1.

25 (2) ~~The~~ (a) Except as provided in 2-15-2015, the executive director shall annually submit to the
26 board for its approval an estimated budget of the entire expense of administering the state fund for the
27 succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund.
28 The administrative expenditures approved by the board may not exceed 15% of the earned annual premium
29 ~~and investment income~~ of the prior fiscal year. A copy of the approved budget must be delivered to the
30 governor and the legislature.

file

~~(b) The administrative expenditures used to determine the 15% limit in subsection (1) do not include:~~

~~(i) allocated or unallocated loss adjustment expenses determined in accordance with the guidelines promulgated by the national association of insurance commissioners;~~

~~(ii) capital asset expenditures required in full accrual accounting, except for capital assets depreciation expenses;~~

~~(iii) payments pursuant to contracts with licensed resident insurance producers; and~~

~~(iv) dividend payments~~ THE BOARD MAY APPROVE ADMINISTRATIVE EXPENDITURES IN EXCESS OF 15% OF THE EARNED ANNUAL PREMIUM OF THE PRIOR FISCAL YEAR, BUT THE EXCESS AMOUNT APPROVED MAY NOT EXCEED ONE-HALF OF THE INVESTMENT INCOME EARNED IN THE PRIOR FISCAL YEAR.

(C) UPON APPROVAL OF THE ESTIMATED BUDGET FOR THE SUCCEEDING FISCAL YEAR, THE STATE FUND SHALL, NO LATER THAN OCTOBER 1 OF EACH YEAR, SUBMIT THE APPROVED ANNUAL BUDGET FOR REVIEW TO THE LEGISLATIVE FINANCE COMMITTEE ESTABLISHED UNDER 5-12-201.

(D) DIVIDENDS MAY NOT BE INCLUDED AS ADMINISTRATIVE EXPENDITURES AS PROVIDED IN SUBSECTION (2)(A), BUT ARE A DISBURSEMENT OF EXCESS SURPLUS PURSUANT TO 39-71-2323 AFTER A DETERMINATION BY THE STATE FUND OF INCOME FROM OPERATIONS.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary."

Section 26. Section 39-71-2501, MCA, is amended to read:

"39-71-2501. Definitions. As used in this part, the following definitions apply:

~~(1) "Account" means the workers' compensation bond repayment account established in 39-71-2504.~~

~~(2)(1)~~ "Department" means the department of revenue provided for in 2-15-1301.

~~(3)(2)~~ "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency

or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

~~(4)(3)~~ (a) "Employer" means, except as provided in subsection ~~(4)(b)~~ (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term "employer" means the person who has control of the payment of wages.

~~(5)(4)~~ "Federal workers' compensation legislation" means federal legislation that provides an employee with compensation or remuneration for accidental injury or death. This legislation includes but is not limited to the Federal Employers' Liability Act, the Federal Employees' Compensation Act, and the Defense Base Act.

~~(6)(5)~~ "Ongoing activities" means obligations or occurrences that are continuous, rather than intermittent or occasional, that exist for a definite period of time during the year, or that are intended to cover or apply to successive and similar obligations or occurrences.

~~(7)(6)~~ "Publicly traded limited partnership" means a business entity that issues shares or similar ownership interests that are sold or purchased by persons through certified stockbrokers or licensed traders on a public exchange recognized by the securities exchange commission.

~~(8)(7)~~ "State fund" means the state compensation insurance fund.

~~(9)(8)~~ "Tax" or "old fund liability tax" means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

~~(10)(9)~~ "Wages" means all remuneration for services performed in the state of Montana by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection ~~(10)(a)~~ (9)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course

1 of the employer's trade or business for the employer for some portion of the day; and

2 (ii) the individual was regularly employed, as determined under subsection ~~(10)(a)(i)~~ (9)(a)(i), by the
3 employer in the performance of service during the preceding calendar quarter.

4 (b) for services not in the course of the employer's trade or business, to the extent that
5 remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals
6 and the payments are received by the employee at the request of and for the convenience of the employer;

7 (c) to or for an employee as a payment for or a contribution toward the cost of any group plan or
8 program that benefits the employee, including but not limited to life insurance, hospitalization insurance for
9 the employee or the employee's dependents, and employees' club activities;

10 (d) as payments from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002, to
11 a qualified individual employee;

12 (e) as wages or compensation, the taxation of which is prohibited by federal law;

13 (f) as wages or compensation for services performed by Montana residents outside the borders of
14 the state of Montana."

15
16 **Section 27.** Section 39-71-2503, MCA, is amended to read:

17 **"39-71-2503. Workers' compensation old fund liability tax.** (1) (a) There is imposed on each
18 employer, except an employer whose employees are covered by federal workers' compensation legislation,
19 a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of
20 old fund liability tax provided in 39-71-2505, of the wages paid by the employer:

21 (i) for the preceding payroll period for employers subject to the payment schedule contained in
22 15-30-204(1);

23 (ii) for the preceding month for employers subject to the payment schedule contained in
24 15-30-204(2); and

25 (iii) for the preceding year for employers subject to the payment schedule contained in
26 15-30-204(3)(a).

27 (b) There is imposed on each employee, except an employee who is covered by federal workers'
28 compensation legislation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages.
29 An employer paying wages for services performed in Montana shall deduct and withhold the tax from the
30 wages.

(c) (i) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager derived from ongoing activities.

(ii) The tax imposed in this subsection (1)(c) applies only to the ordinary income of a shareholder, partner, member, or manager as the term "ordinary income" is defined in the Internal Revenue Code.

(iii) Partners of a publicly traded limited partnership are not subject to the tax imposed in this subsection (1)(c).

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who owns stock in a closely held corporation that meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

~~(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.~~

(F) THIS OLD FUND LIABILITY TAX MUST BE USED TO REDUCE THE UNFUNDED LIABILITY IN THE STATE FUND INCURRED FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990.

~~(g)(f)(G)~~ Each employer shall maintain the records that the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents

1 during regular business hours.

2 ~~(h)(g)(H)~~ An employee does not have any right of action against an employer for any money
3 deducted and withheld from the employee's wages and paid to the state in compliance or intended
4 compliance with this section.

5 ~~(i)(h)(I)~~ The employer is liable to the state for any amount of old fund liability taxes, plus interest
6 and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state
7 the old fund liability tax required by this section.

8 ~~(j)(i)(J)~~ A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or
9 member or manager of a limited liability company is liable to the state for the old fund liability tax, plus
10 interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit
11 to the state the old fund liability tax required by this section.

12 (2) All collections of the tax must be deposited as ~~received in the account~~ provided for in
13 39-71-2321. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

14 (3) (a) Tax payments and returns required by subsections (1)(a) and (1)(b) must be made pursuant
15 to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any
16 remainder to the account provided for in ~~39-71-2504~~ 39-71-2321.

17 (b) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of
18 partnerships, and members or managers of limited liability companies must be made with and at the same
19 time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment
20 to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the ~~account~~ state fund
21 ACCOUNT as provided for in ~~39-71-2504~~ 39-71-2321.

22 (4) An employer's officer or employee with the duty to collect, account for, and pay to the
23 department the amounts due under this section who fails to pay an amount is liable to the state for the
24 unpaid amount and any penalty and interest relating to that amount.

25 (5) Returns and remittances under subsection (3) and any information obtained by the department
26 during an audit are subject to the provisions of 15-30-303, but the department may disclose the information
27 to the department of labor and industry for the purpose of investigation and prevention of noncompliance,
28 tax evasion, fraud, and abuse under the unemployment insurance laws, under circumstances and conditions
29 that ensure the continued confidentiality of the information.

30 (6) The department of labor and industry and the state fund shall give the department a list of all

employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. The department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, that are not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department."

Section 28. Section 39-71-2505, MCA, is amended to read:

"39-71-2505. Payment of unfunded for OF UNFUNDED liability for injuries resulting from accidents occurring before or after July 1, 1990. ~~(1) The state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and that the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.~~

~~(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1). In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal year end cash, and the projected fiscal year end cash for the year 2007. (1) THE STATE FUND SHALL PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, NOT COVERED BY ANY OTHER FUNDING SOURCE, BY BORROWING FROM THE RESERVES~~

212

~~ACCUMULATED FROM PREMIUMS PAID TO THE STATE FUND, BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, 1990, AND INVESTED BY THE BOARD OF INVESTMENTS, FROM TIME TO TIME, THE AMOUNT THAT THE STATE FUND DETERMINES AND THAT THE BUDGET DIRECTOR CERTIFIES, AS PROVIDED IN 39-71-2354, WILL BE NEEDED TO PAY FOR ADMINISTERING AND PAYING THE CLAIMS FOR THE ENSUING YEAR.~~

~~(2) IN JANUARY OF EACH YEAR, PRIOR TO THE START OF THE FOLLOWING FISCAL YEAR, THE STATE FUND SHALL FORWARD TO THE BUDGET DIRECTOR INFORMATION PERTAINING TO THE AMOUNT THAT THE STATE FUND WILL BORROW FOR THE ENSUING FISCAL YEAR TO PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR THE INJURIES PROVIDED FOR IN SUBSECTION (1). IN ADDITION, THE STATE FUND SHALL FORWARD TO THE BUDGET DIRECTOR THE SCHEDULE OF PROJECTED LIABILITY PAYMENTS AND CASH NEEDS ON WHICH THE AMOUNT TO BE BORROWED IS BASED. THE SCHEDULE MUST INCLUDE BUT IS NOT LIMITED TO TOTAL PROJECTED LIABILITY PAYMENTS, LOANS AND BOND DEBT PAYMENTS, REVENUE FROM THE OLD FUND LIABILITY TAX PROVIDED FOR IN 39-71-2503, PROJECTED FISCAL YEAREND CASH, AND THE PROJECTED FISCAL YEAREND CASH FOR THE YEAR 2007 ON JULY 1, 1998, THE STATE FUND MAY ONLY PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED ON OR BEFORE JULY 1, 1990, PURSUANT TO A CONTACT AUTHORIZED UNDER 39-71-2316 THE STATE FUND SHALL PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, NOT COVERED BY ANY OTHER FUNDING SOURCE, BY BORROWING FROM THE RESERVES ACCUMULATED FROM PREMIUMS PAID TO THE STATE FUND, BASED UPON WAGES PAYABLE ON OR AFTER JULY 1, 1990, AND INVESTED BY THE BOARD OF INVESTMENTS, FROM TIME TO TIME, THE AMOUNT THAT THE STATE FUND DETERMINES AND THAT THE BUDGET DIRECTOR CERTIFIES, AS PROVIDED IN 39-71-2354, WILL BE NEEDED TO PAY FOR ADMINISTERING AND PAYING THE CLAIMS FOR THE ENSUING YEAR.~~

~~(2) IN JANUARY OF EACH YEAR, PRIOR TO THE START OF THE FOLLOWING FISCAL YEAR, THE STATE FUND SHALL FORWARD TO THE BUDGET DIRECTOR INFORMATION PERTAINING TO THE AMOUNT THAT THE STATE FUND WILL BORROW FOR THE ENSUING FISCAL YEAR TO PAY FOR THE COST OF ADMINISTERING AND PAYING CLAIMS FOR THE INJURIES PROVIDED FOR IN SUBSECTION (1). IN ADDITION, THE STATE FUND SHALL FORWARD TO THE BUDGET DIRECTOR THE SCHEDULE OF PROJECTED LIABILITY PAYMENTS AND CASH NEEDS ON WHICH THE AMOUNT TO BE BORROWED IS~~

217

1 BASED. THE SCHEDULE MUST INCLUDE BUT IS NOT LIMITED TO TOTAL PROJECTED LIABILITY
2 PAYMENTS, LOANS AND BOND DEBT PAYMENTS, REVENUE FROM THE OLD FUND LIABILITY TAX
3 PROVIDED FOR IN 39-71-2503, PROJECTED FISCAL YEAREND CASH, AND THE PROJECTED FISCAL
4 YEAREND CASH FOR THE YEAR 2007.

5 ~~(b) (i)(1)(3)(2)(3)~~ There is imposed on each employer a workers' compensation old fund liability tax
6 as provided in 39-71-2503. The employer old fund liability tax is an amount equal to 0.5% of the
7 employer's payroll in the preceding calendar quarter.

8 ~~(iii)(2)(4)(3)(4)~~ The employee old fund liability tax is an amount equal to 0.2% of the employee's
9 wages in the preceding calendar quarter.

10 ~~(iii)(3)(5)(4)(5)~~ ~~The~~ Except as provided in subsection ~~(5)(b) (7)(E) (6)(E) (7)(E)~~, the old fund liability
11 tax is an amount equal to 0.2% on the profit of each separate business of a sole proprietor and on the
12 distributive share of ordinary income of each subchapter S. corporation shareholder, partner of a
13 partnership, or member or manager of a limited liability company.

14 ~~(iv)(4)(6)(5)(6)~~ The rate of the employer old fund liability tax determined by this section includes
15 the 0.28% employer old fund liability tax provided for in 39-71-2503.

16 ~~(v) (A) The employer (5) (a) Except as provided in subsections (5)(b) and (5)(c), the old fund liability~~
17 ~~tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007~~
18 ~~on January 1, 1999, if, by October 15, 1998, the budget director certifies to the department that, based~~
19 ~~upon projections approved by the state fund board of directors, the claim reserve liability to surplus ratio~~
20 ~~of the state fund on June 30, 1999, will be less than 7.5 to 1.~~

21 ~~(b) If, prior to October 15, 1998, the budget director receives projections approved by the state~~
22 ~~fund board of directors that the claim reserve liability to surplus ratio on June 30, 1999, is greater than 7.5~~
23 ~~to 1, the budget director shall certify the need to continue the tax through June 30, 1999, and shall notify~~
24 ~~the department no later than October 15, 1998, to collect the tax pursuant to this section. If the tax is~~
25 ~~terminated pursuant to this subsection, the amount of tax imposed under subsection (3) is an amount equal~~
26 ~~to 0.1%.~~

27 ~~(c) If, prior to January 15, 1999, the budget director receives projections from the state fund board~~
28 ~~of directors that the claim reserve liability to surplus ratio of the state fund on June 30, 2000, is greater~~
29 ~~than 7.5 to 1, the budget director shall certify the need to continue the tax through December 31, 1999,~~
30 ~~and shall notify the department no later than January 15, 1999, to collect the tax pursuant to this section.~~

~~(d) In determining the projected claim liability reserve to surplus ratio under this subsection (5), the state fund shall include the estimated future amounts of the old fund liability tax through the estimated termination date.~~

~~(e) Regardless of any projected claim reserve liability to surplus ratio required under this subsection (5), the old fund liability tax terminates no later than January 1, 2000.~~

~~(7)(6)(7) (A) THE OLD FUND LIABILITY TAX IMPOSED UNDER 39-71-2503 AND 39-71-2505 TERMINATES ON EITHER JANUARY 1 OR JULY 1 OF THE YEAR IN WHICH CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, ARE PROJECTED TO BE ADEQUATELY FUNDED.~~

~~(B) AS USED IN THIS PART, "ADEQUATELY FUNDED" MEANS THE PRESENT VALUE OF:~~

~~(I) THE TOTAL COST OF FUTURE BENEFITS REMAINING TO BE PAID;~~

~~(II) THE COST OF ADMINISTERING THE CLAIMS PURSUANT TO A CONTRACT AUTHORIZED UNDER 39-71-2316; AND~~

~~(III) AN ADDITIONAL AMOUNT EQUAL TO 10% OF THE TOTAL OF THE AMOUNTS IN SUBSECTIONS (7)(B)(I) AND (7)(B)(II) (6)(B)(I) AND (6)(B)(II) (7)(B)(I) AND (7)(B)(II).~~

~~(C) EACH FISCAL YEAR UNTIL THE OLD FUND LIABILITY TAX TERMINATES, THE INDEPENDENT ACTUARY ENGAGED BY THE STATE FUND PURSUANT TO 39-71-2330 SHALL PROJECT THE UNPAID CLAIMS LIABILITY, AS OF THE FOLLOWING JUNE 30, FOR CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990.~~

~~(D) THE OLD FUND LIABILITY TAX TERMINATES ON JANUARY 1 IF, BY OCTOBER 15 OF THE PRIOR YEAR, THE BUDGET DIRECTOR CERTIFIES TO THE DEPARTMENT THAT, BASED UPON THE INDEPENDENT ACTUARY'S SELECTED BEST ESTIMATE ULTIMATE PROJECTIONS AND AS APPROVED BY THE STATE FUND BOARD OF DIRECTORS, CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, WILL BE ADEQUATELY FUNDED AS OF JANUARY 1.~~

~~(E) THE OLD FUND LIABILITY TAX TERMINATES ON JULY 1 IF, BY FEBRUARY 28 OF THE YEAR THE BUDGET DIRECTOR CERTIFIES TO THE DEPARTMENT THAT, BASED UPON THE INDEPENDENT ACTUARY'S SELECTED BEST ESTIMATE ULTIMATE PROJECTIONS AND, AS APPROVED BY THE STATE FUND BOARD OF DIRECTORS, CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, WILL BE ADEQUATELY FUNDED AS OF JULY 1.~~

~~(F) IF THE OLD FUND LIABILITY TAX TERMINATES ON JULY 1, THE AMOUNT OF TAX IMPOSED~~

26

1 UNDER SUBSECTION ~~(5)~~ (4) (5) IS AN AMOUNT EQUAL TO 0.1% FOR THE FULL CALENDAR YEAR.

2 (G) IN DETERMINING WHETHER CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT
3 OCCURRED BEFORE JULY 1, 1990, ARE ADEQUATELY FUNDED, THE ESTIMATED FUTURE AMOUNTS
4 OF OLD FUND LIABILITY TAX MUST BE INCLUDED.

5 (H) BY OCTOBER 1 OF EACH YEAR FOLLOWING THE FIRST FULL FISCAL YEAR AFTER
6 TERMINATION OF THE OLD FUND LIABILITY TAX, ANY FUNDS IN EXCESS OF THE ADEQUATE FUNDING
7 AMOUNT ESTABLISHED IN SUBSECTION ~~(7)(B)~~ (6)(B) (7)(B) MUST BE RETURNED TO THE ACCOUNT
8 ESTABLISHED IN 39-71-2321 TO PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT
9 OCCURRED AFTER JULY 1, 1990. UNDER THIS SECTION, THE TOTAL AMOUNT OF FUNDS RETURNED
10 TO THE ACCOUNT MAY NOT EXCEED \$63.8 MILLION.

11 (I) IF, IN ANY FISCAL YEAR AFTER THE OLD FUND LIABILITY TAX IS TERMINATED AND CLAIMS
12 FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED AFTER JULY 1, 1990, ARE NOT
13 ADEQUATELY FUNDED, ANY AMOUNT RETURNED TO THE ACCOUNT IN 39-71-2321 TO PAY CLAIMS
14 FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED AFTER JULY 1, 1990, PURSUANT TO
15 SUBSECTION ~~(7)(H)~~ (6)(H) (7)(H) MUST BE TRANSFERRED BACK TO THE ACCOUNT ESTABLISHED IN
16 39-71-2321 TO PAY CLAIMS FOR INJURIES RESULTING FROM ACCIDENTS THAT OCCURRED BEFORE
17 JULY 1, 1990.

18 (J) THE INDEPENDENT ACTUARY ENGAGED BY THE STATE FUND PURSUANT TO 39-71-2330
19 SHALL PROJECT THE UNPAID CLAIMS LIABILITY FOR CLAIMS FOR INJURIES RESULTING FROM
20 ACCIDENTS THAT OCCURRED BEFORE JULY 1, 1990, EACH FISCAL YEAR UNTIL ALL CLAIMS ARE PAID.

21 ~~(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are~~
22 ~~outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.~~

23 ~~(vi)(6)(8)~~ (8) The old fund liability tax described in this section must be collected and deposited as
24 provided in 39-71-2321 and 39-71-2503 and 39-71-2504.

25 ~~(3) If in any January the cumulative projected amount to be borrowed by the state fund from~~
26 ~~reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1,~~
27 ~~1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990,~~
28 ~~not including any outstanding bonds as of May 13, 1993, exceeds \$80 million for the following fiscal year,~~
29 ~~the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the~~
30 ~~following fiscal year over the current tax rate. If in any January the projected fiscal year end cash balance~~

~~for the current fiscal year exceeds \$25 million, the tax rate on the persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.~~

~~(4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.~~

~~(5) The budget director shall certify the cash flow projections of the state fund required by this section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected pursuant to this section."~~

Section 29. Section 39-71-2905, MCA, is amended to read:

"39-71-2905. Petition to workers' compensation judge -- time limit on filing. (1) A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. In addition, the district court that has jurisdiction over a pending action under 39-71-515 may request the workers' compensation judge to determine the amount of recoverable damages due to the employee. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

(2) A petition for hearing before the workers' compensation judge must be filed within 2 years after the dispute arises or after benefits are denied, whichever occurs first."

NEW SECTION. **Section 30. Transfer of funds.** The balance remaining in the workers' compensation bond repayment account on June 30, 1997, must be deposited in the state fund as provided in 39-71-2321.

NEW SECTION. **Section 31. Repealer.** (1) ~~Sections 39-71-2351, 39-71-2352, 39-71-2354,~~

1 ~~39-71-2355, and 39-71-2504, MCA, are~~ SECTION 39-71-2504, MCA, IS repealed.

2 (2) Sections 39-71-2354, 39-71-2355, 39-71-2501, 39-71-2502, 39-71-2503, 39-71-2505, and
3 39-71-2506, MCA, are repealed.

4
5 NEW SECTION. Section 32. Severability. If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9
10 NEW SECTION. Section 33. Retroactive applicability. (1) [SECTIONS 6(35)(F) AND 10] APPLY
11 RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO CLAIMS FOR INJURIES OCCURRING PRIOR TO
12 [THE EFFECTIVE DATE OF SECTIONS 6(35)(F) AND 10].

13 (2) [Section ~~40~~ 11] applies retroactively, within the meaning of 1-2-109, to claims filed on or after
14 March 27, 1973.

15
16 NEW SECTION. Section 34. Effective dates -- applicability. (1) [Sections 1, 2, 4 through 6, 14,
17 16, 17, 19 through 26, 28, and 29(1) 1 THROUGH 5, 6(1) THROUGH 6(34) AND 6(36), 9, 14, 16, 17,
18 19, 20, 22, 24 THROUGH 27, 29, AND 30(1) 15, 17, 18, 20, 21, 23, 25 THROUGH 28, 30, AND 31(1)]
19 are effective July 1, 1997.

20 (2) [Sections 7, 8, ~~11~~ through ~~13~~, and ~~27~~ 12, 13, THROUGH 14 AND 28 29] are effective July
21 1, 1997, and apply to claims for injuries occurring on or after [the effective dates of sections 7, 8, ~~11~~
22 ~~through 13, and 27~~ 12, 13, THROUGH 14 AND 28 29].

23 (3) [Sections ~~3, 9, 15, and 18~~ 8, 18, 21, 23, AND 30(2) 19, 22, 24, AND 31(2)] are effective on
24 the date that the budget director certifies that the old fund liability tax is terminated pursuant to [section
25 ~~26 27 28~~].

26 (4) [Section ~~29(2) 15~~ SECTIONS SECTION 16 AND 24] is ~~ARE~~ IS effective ~~January 1, 2000~~ JULY
27 1, 1998.

28 (5) [Sections ~~10, 30, 31, and 33~~ 6(35), 10, 11, 31, 32, 34 32, 33, 35, and this section] are
29 effective on passage and approval.

30

1 NEW SECTION. Section 35. Contingent termination. TERMINATION. (1) [Sections 14 and 17 ~~17~~
2 ~~18 AND 22 23~~] terminate on the date that the old fund liability tax is terminated pursuant to [section ~~26~~
3 ~~27 28~~].

4 (2) [SECTION 14 15] TERMINATES JUNE 30, 1998.

5 -END-